

**Report and Recommendations on
A NEPA Pilot Projects Initiative**

Prepared by

The U.S. Institute for Environmental Conflict Resolution

of

**The Morris K. Udall Foundation
Tucson, Arizona**

Submitted to:

Senator Max Baucus

Senator Mike Crapo

Senator Harry Reid

Senator Craig Thomas

August 29, 2001

Report and Recommendations on A NEPA Pilot Projects Initiative

U.S. Institute for Environmental Conflict Resolution
August 29, 2001

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Executive Summary

U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas requested that the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) investigate how pilot projects can be used to evaluate the potential role of collaboration, consensus building, and appropriate dispute resolution processes in improving implementation of the National Environmental Policy Act (NEPA), specifically within the context of federal lands and natural resource management.

The primary purpose of the U.S. Institute is to assist parties in resolving environmental, natural resource, and public lands conflicts through non-adversarial consensus building and dispute resolution processes, and it has been authorized by Congress with assisting the federal government in implementing Section 101 of NEPA by providing assessment, mediation, and services to resolve environmental disputes involving federal agencies. The U.S. Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch located in Tucson, Arizona.

The Senators asked the U.S. Institute to consult with a broad array of individuals representing environmental organizations, resource users, federal, state and local governments, tribes, participants in local and regional collaborative processes, and NEPA experts. Over the past six months, with the assistance of the Meridian Institute, a non-profit organization that provides environmental conflict resolution and collaborative problem solving services, the U.S. Institute has conducted one-on-one conversations and interviews with over 70 individuals and organizations, made presentations before several different agency representatives, published preliminary findings in the Federal Register and solicited written feedback, and held two national public workshops in Denver and Washington, D.C. attended by over 100 people.

The U.S. Institute's research and consultations identified a number of issues and concerns regarding NEPA implementation and collaborative decision-making. Clearly there is a range of views, nationally, regarding the effectiveness of NEPA implementation. These differences reflect legitimate underlying differences in values and perspectives about the nature and extent of environmental impacts for proposed projects, and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the ways NEPA is implemented and that some of this improvement can be contributed through collaborative processes and conflict resolution strategies. Well-managed and highly visible pilot projects may well bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses. In turn, this may help the nation achieve the substantive objectives articulated in Section 101.

The U.S. Institute has further determined that across the full spectrum of diverse interests contacted there is a willingness to participate in such an initiative; there also appears to be a general appreciation for, and confidence in, the U.S. Institute's ability to provide leadership and oversight for such an initiative.

In this report, the U.S. Institute presents its recommended approach to the challenge set forth in the Senators' letter. The U.S. Institute recommends moving forward with a pilot projects initiative designed to provide vital information, analysis, field experience, and guidance for improving implementation of NEPA through collaborative decision-making, consensus building and conflict resolution for issue involving federal lands and natural resource management.

The U.S. Institute recommends the following five goals for the initiative:

1. Work toward a national consensus on how to improve NEPA implementation, and by implication, other natural resource and public lands management laws and regulations;
2. Demonstrate and evaluate innovative and practical collaborative approaches to clearly delineated NEPA implementation problems;
3. Build a broader public understanding of the appropriate uses and standards for collaboration and conflict resolution within the NEPA context;
4. Provide guidance about conditions under which collaborative decision-making, consensus building, and dispute resolution processes can improve NEPA implementation; and
5. Explore the potential for integrating the provisions of Section 101 into collaborative NEPA processes.

The proposed design emphasizes the following features:

- Broad outreach to, and public engagement of, affected constituencies and interested stakeholders.
- Systematic evaluation and monitoring of pilot projects and other collaborative efforts.
- A sufficient number of pilot projects to reflect the national range of contexts and challenges
- Learning from previous and ongoing collaborative efforts
- Pilot projects as future exemplars of NEPA implementation through collaboration.

Pilot projects can do far more than test or demonstrate innovative approaches to achieving preferred outcomes. They can become standard-bearers for future implementation practices, representing the most relevant applications by which to judge future processes and outcomes. As such, these pilot projects should be identified in a manner that distinguishes their contribution and value from other pilot studies or demonstration programs involving NEPA. Accordingly, the proposed name for this initiative is-- ICON: Innovative Collaborative Opportunities for NEPA.

The ICON program is envisioned to incorporate seven, carefully integrated components:

- Component 1: Conduct Concurrent Baseline Investigations
- Component 2: Establish an Advisory Committee
- Component 3: Conduct Ongoing Public Dialogue
- Component 4: Develop Principles and Outcomes Framework
- Component 5: Design and Implement Evaluation Component
- Component 6: Select and Support ICON Projects
- Component 7: Complete Final Guidance to Congress

These program components, and their integrated design, are intended to produce several specific outputs. Key deliverables currently anticipated include:

- Published baseline reports pertinent to NEPA and collaborative decision-making;
- Ongoing national-level public dialogue through national conferences and national public workshops, aided by oversight from an advisory committee;
- A written framework of guiding principles and outcomes developed through a consensus-based approach;
- An evaluation approach and methodology consistent with the above framework to be used in evaluating both the ICON projects and a retrospective analysis of other relevant collaborative processes;
- Support, technical assistance, and evaluation of ICON projects throughout the country;
- A comprehensive retrospective evaluation of past and current collaborative processes in the context of NEPA;
- Final guidance and recommendations for federal agencies and stakeholders; and
- Annual and final program reports to Congress.

I. Introduction and Background

At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) has been exploring how pilot projects can be used to evaluate the potential role of collaboration, consensus building, and appropriate dispute resolution processes in improving implementation of the National Environmental Policy Act (NEPA), specifically within the context of federal lands and natural resource management. (See Appendix A for the Senators' letter and the U.S. Institute's response.)

This request was based on prior work commissioned by the Council on Environmental Quality (CEQ) and sponsored by the University of Wyoming's Institute for Environmental and Natural Resources and the University of Montana's O'Connor Center for the Rocky Mountain West. (See Appendix B for an executive summary of their 1999 conference.) The U.S. Institute was identified as an appropriate venue for such an initiative because its primary purpose is to assist parties in resolving environmental, natural resource, and public lands conflicts through non-adversarial consensus building and dispute resolution processes, and it has been authorized by Congress with assisting the federal government in implementing Section 101 of NEPA by providing assessment, mediation, and services to resolve environmental disputes involving federal agencies. (See Appendix C for the Environmental Policy and Conflict Resolution Act of 1998 (Pub. L. 105-156) and Appendix D for an overview of recent U.S. Institute activities.) The U.S. Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch located in Tucson, Arizona and overseen by a board of trustees appointed by the President with the advice and consent of the Senate.

Over the past six months, the U.S. Institute, with the assistance of the Meridian Institute, has sought input from a broad array of individuals representing environmental organizations, resource users, federal, state and local governments, tribes, participants in local and regional collaborative processes, and NEPA experts. Input has been gathered through one-on-one conversations and interviews, group meetings, two national public workshops, and submitted written comments. The purpose of these consultations was to learn more about:

- what specific concerns or issues should be addressed by pilot projects;
- what parameters should define a pilot projects initiative;
- what criteria should be used to select pilot projects;
- what institutional mechanisms would be needed to assure project oversight, implementation, and evaluation; and
- how to maximize the likelihood that positive lessons learned from pilots can be mainstreamed and begin to influence the implementation of NEPA in the future.

Based on preliminary research and consultations with over 70 individuals and organizations (Appendix E), the U.S. Institute published a draft report in the May 11, 2001 Federal Register (Appendix F) soliciting further comment and feedback and noticing two public workshops. The workshops were held in June in Denver and Washington, D.C. Written comments were also submitted. Meridian Institute's report, in Appendix G, summarizes the results of all the public

input and consultation received to date. (See Appendix H for a list of those who provided written comments.)

Identified Problems

The U.S. Institute's preliminary research and consultations revealed a number of perceived problems with both NEPA implementation and collaborative processes. (See Appendix F for a detailed summary of the preliminary findings.) Some of the more salient issues raised concerning NEPA were as follows:

- The implementation of NEPA differs considerably across agencies and within agencies, leading to considerable inconsistencies;
- Coordination among agencies is often inadequate or poorly timed, as is intergovernmental coordination;
- Inefficient and duplicative processes abound;
- There is an overemphasis on NEPA documentation and litigation protection;
- Early use of NEPA processes as part of strategic planning and decision-making is infrequent; and
- There has been little attention given to realizing the goals laid out in NEPA Section 101.

With regard to collaborative decision-making, consensus building and conflict resolution, several issues and concerns emerged. These were identified across four different organizational contexts of collaboration: interagency; intergovernmental; governmentally organized multi-stakeholder; and privately organized processes. Among the various problems raised were:

- A lack of guidance for agencies on when and how to participate in collaborative processes;
- The resource-intensive nature of such processes and inadequate process funding;
- Frequent lack of clarity on stakeholder roles and responsibilities, and inadequate stakeholder guidance;
- Difficulties in maintaining balanced stakeholder representation; and
- An overemphasis on the process of collaboration as an end itself without adequate attention to planning outcomes, decision-making, and implementation.

Observations and Conclusion

Over the past months of meetings and consultation, the Institute has gained a broader understanding of the concerns and opportunities that are created in the NEPA implementation process as the Meridian Institute's synthesis in Appendix G reports. Clearly there is a range of views, nationally, regarding the effectiveness of NEPA implementation. These differences reflect legitimate underlying differences in values and perspectives about the nature and extent of environmental impacts for proposed projects, and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Some of this improvement can be contributed through collaborative processes and conflict

resolution strategies. Well-managed and highly visible pilot projects may well bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

Essential to the U.S. Institute's decision to proceed with recommending an initiative were the observations that:

- interest in these issues is high and of national significance; and
- across the full spectrum of diverse interests contacted there is a willingness to participate in such an initiative.

In this report, the U.S. Institute presents its approach to the challenge set forth in the Senators' letter. The U.S. Institute recommends moving forward with a pilot projects initiative designed to provide vital information, analysis, field experience, and guidance for improving implementation of NEPA through collaborative decision making, consensus building and conflict resolution.

II. Recommended Program Goals and Strategy

The Senators' request was a very broad one. Preliminary conversations and briefings with staff of the Senators and of the Environment and Public Works Committee further clarified some of the issues and concerns of the Senators and the committee staff. The public input and consultation process revealed an additional array of attendant issues, concerns, and interests. The challenge for the U.S. Institute is to focus and shape a meaningful investigation conducted in a timely manner. Critical to this endeavor, however, is building agreement and support among the diverse constituents engaged in and affected by federal lands and natural resource management actions that implicate NEPA.

Defining Goals

The U.S. Institute recommends the pursuit of the following five overarching, interrelated goals:

1. Work toward a national consensus on how to improve NEPA implementation, and by implication, other natural resource and public lands management laws and regulations;
2. Demonstrate and evaluate innovative and practical collaborative approaches to clearly delineated NEPA implementation problems;
3. Build a broader public understanding of the appropriate uses and standards for collaboration and conflict resolution within the NEPA context;
4. Provide guidance about the conditions under which collaborative decision making, consensus building, and dispute resolution processes can improve NEPA implementation; and

5. Explore the potential for integrating the provisions of Section 101 into collaborative NEPA processes.

U.S. Institute's Program Approach

In order to achieve these goals, the U.S. Institute recommends taking a focused programmatic approach which:

- Emphasizes improvements in NEPA implementation, looking not only at problems to be solved, but opportunities to be maximized;
- Focuses primarily on the context of federal public lands and natural resource management, understanding that many of the lessons learned will be transferable (e.g., to transportation, federal facilities, urban infrastructure);
- Examines the potential of collaborative decision making across the NEPA process (i.e. planning and pre-scoping through final rules and litigation), with an emphasis on agreement-seeking (i.e., not on conventional “one-way” public input or public comment processes); and
- Explores the viability of Section 101 of NEPA as a potential guide for establishing appropriate balance and representation in NEPA processes and in relation to the substantive nature of environmental decisions.

Critical Design Features

The request from the Senators was specifically for advice on how to make use of pilot projects. Pilot projects themselves can be most useful and informative if they incorporate a number of features and are conducted in a manner that reflects the very best in collaborative principles and best practices. As a consequence, several key features are embodied in the proposed program design, including provisions for:

- *Broad outreach to and public engagement of affected constituencies and interested stakeholders.* A transparent, open, and public process must be designed and managed to build consensus on the desired outcomes for this initiative. A fully representative group of advisors, chartered under the Federal Advisory Committee Act, is one essential mechanism for this. In addition, broader public involvement and a continuing public dialogue will be coordinated during the life of the initiative.
- *Systematic assessment and monitoring.* In order to learn from pilot projects, an appropriate evaluation methodology is essential. Such a methodology requires an articulation of both the expected outcomes for pilot projects and the principles and practices by which those outcomes are to be attained. Given the timeframe for addressing many federal lands and natural resource management issues, pilot projects may take on average two years to complete and their impacts may not be known for

several more years. This requires some attention be given to establishing a long-term monitoring and assessment process.

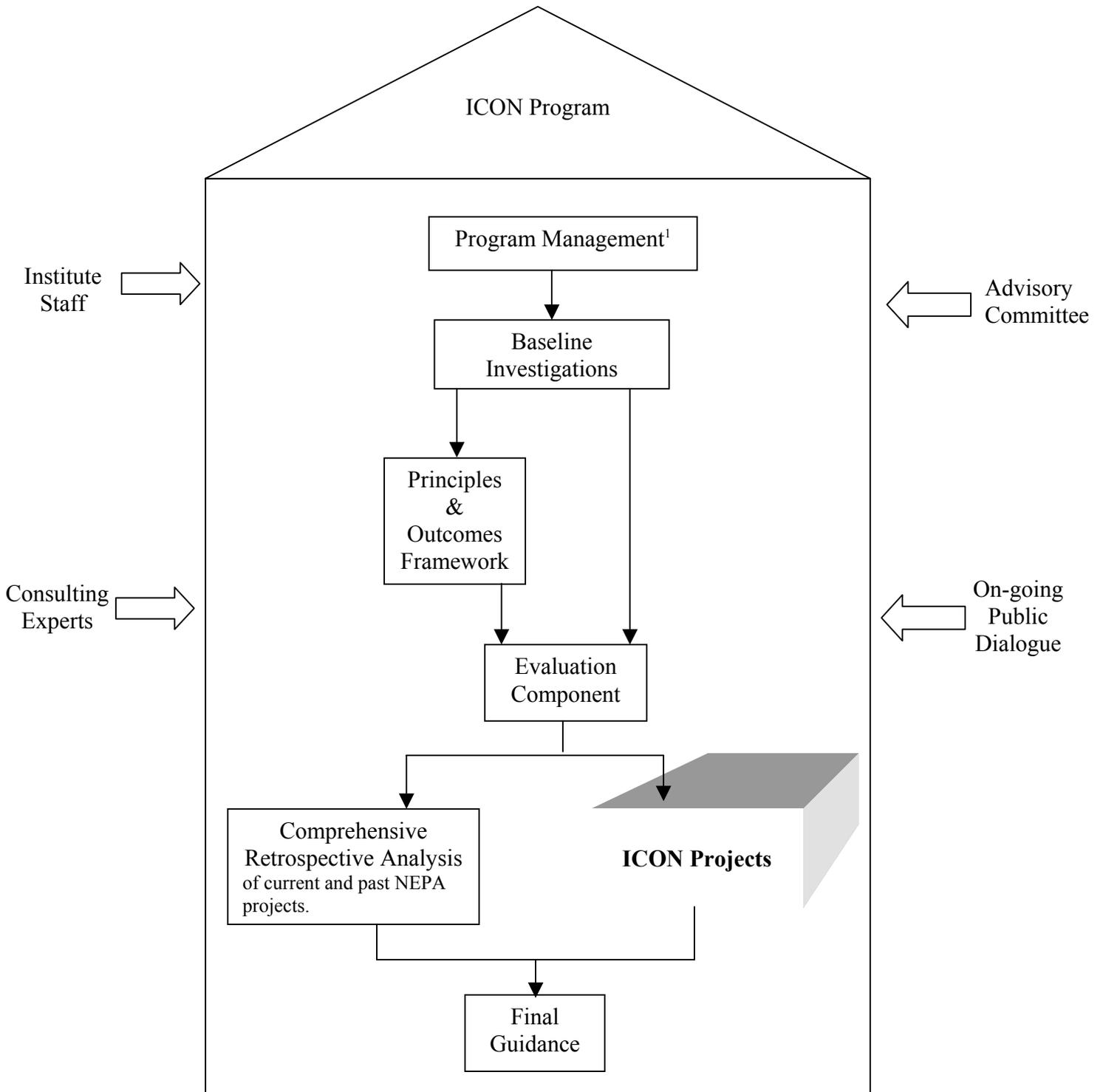
- *A sufficient number of pilot projects to reflect the diverse contexts and challenges.* As the early public input and consultations revealed, there are many issues regarding NEPA implementation that might be addressed through some appropriate form of collaborative decision making or conflict resolution. These issues arise in different ways for a number of federal agencies that have responsibility for lands and natural resource management, within different states and regions, and at least four different contexts for collaboration (i.e., interagency, intergovernmental, governmentally organized, and privately organized). This complexity alone suggests that a number of pilot projects will be required to reflect (at least sample) the breadth of possible applications.
- *Learning from previous and ongoing collaborative efforts.* The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. There are a number of case studies and current collaborative processes that can be learned from. What is needed, however, are some baseline investigations to assemble and analyze the experiences occurring on the ground and draw on the advice of practitioners and researchers in a number of fields. The proposed design builds on a number of concurrent studies to assist in developing the principles and outcomes to be evaluated in the pilot projects. The evaluation methodology can also be applied retrospectively to a comprehensive database of cases and projects.
- *Pilot projects as future exemplars of NEPA implementation through collaboration.* Pilot projects can do more than experiment with or demonstrate innovative approaches to achieve preferred outcomes. They can become standard-bearers for future implementation practices, representing the very best applications by which to judge future processes and outcomes. As such, these pilot projects should be identified in a manner that distinguishes them from other pilot studies or demonstration programs involving NEPA. Accordingly, the proposed name for this initiative is: ICON: Innovative Collaborative Opportunities for NEPA.

Proposed Program Design

The U.S. Institute has designed the ICON program to achieve the defining goals, taking the overall approach and critical design features into account. The following Figure 1 provides a flow diagram of the program composed of seven carefully designed and fully integrated components:

- Component 1: Conduct Concurrent Baseline Investigations
- Component 2: Establish an Advisory Committee
- Component 3: Conduct Ongoing Public Dialogue
- Component 4: Develop Principles and Outcomes Framework
- Component 5: Design and Implement Evaluation Component
- Component 6: Select and Support ICON Projects
- Component 7: Complete Final Guidance to Congress

Figure 1. Program Design



¹ Program management is present in each step of the process.

Program Deliverables

These program components and their integrated design are intended to produce several specific outputs. Key deliverables currently anticipated include:

- Published baseline reports pertinent to NEPA and collaborative decision-making;
- Ongoing national-level public dialogue through national conferences and public workshops, aided by oversight from an advisory committee;
- A written framework of guiding principles and outcomes developed through a consensus-based approach;
- An evaluation approach and methodology consistent with the above framework to be used in evaluating both the ICON projects and a retrospective analysis of other relevant collaborative processes;
- Support, technical assistance, and evaluation of ICON projects throughout the country;
- A comprehensive retrospective evaluation of past and current collaborative processes in the context of NEPA;
- Final guidance and recommendations for federal agencies and stakeholders; and
- Annual and final program reports to Congress.

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A NEPA Pilot Projects Initiative**

U.S. Institute for Environmental Conflict Resolution

Appendices

Appendix A.

Letter of Request from Senators and Response to Request

United States Senate
WASHINGTON, DC 20510

September 20, 2000

Kirk Emerson, Ph.D.
Director
U.S. Institute for Environmental Conflict Resolution
110 South Church Avenue, Ste 3350
Tucson, AZ 85701

Dear Kirk:

We are writing to seek your assistance in investigating how pilot projects could be used to bring collaborative decision making to actions taken under the National Environmental Policy Act (NEPA). In particular, it may be useful to focus on strategies for collaboration, consensus building, and dispute resolution to achieve the substantive goals of NEPA and resolve environmental policy issues that often arise in federal land and natural resource management decisions.

As you may know, the need for consensus building and dispute resolution is vital to good collaborative decision making. This need, coupled with your organization's Congressional charter to "assist the federal government in implementing Section 101 of NEPA by providing assessment, mediation and other related services to environmental disputes involving agencies and instrumentalities of the United States" appears to make the U.S. Institute for Environmental Conflict Resolution the natural organization to pursue this investigation.

We encourage you to draw upon the expertise of knowledgeable NEPA experts, alternative dispute resolution practitioners, and other stakeholders who have an interest in establishing principles that could be used to guide a collaborative decision making pilot project. We further encourage you to build upon the efforts of stakeholders over the last few years with regard to collaborative decision making in NEPA processes.

Collaborative decision making may allow us to improve the operation of NEPA. This, in turn, will increase public confidence in the NEPA process. Pilot projects could be a small measured step toward achieving these goals.

Thank you for your consideration of this undertaking.

Sincerely,



Mike Crapo
United States Senator



Craig Thomas
United States Senator



Max Baucus
United States Senator



Harry Reid
United States Senator

U.S. INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION

Suite 3350 110 South Church Avenue (520) 670-5299 TEL
Tucson, Arizona 85701 (520) 670-5530 FAX

Kirk Emerson, Ph.D.
INSTITUTE DIRECTOR

November 15, 2000

Honorable Mike Crapo
111 Russell Senate Office Building
Washington, DC 20510

Honorable Craig Thomas
109 Hart Senate Office Building
Washington, DC 20510

Honorable Max Baucus
511 Hart Senate Office Building
Washington, D.C. 20510

Honorable Harry Reid
528 Hart Senate Office Building
Washington, DC 20510

Gentlemen:

Thank you for your request to explore the use of pilot projects to bring collaborative decision making to actions taken under the National Environmental Policy Act (NEPA). The U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation appreciates the significance of this charge and shares your interest in the potential for consensus building and conflict resolution strategies to enhance the implementation of NEPA, particularly in the context of federal land and natural resource management issues.

We will pursue this undertaking over the next few months in line with your guidance to consult with other experts and stakeholders and report back to you as soon as possible. In the meantime, we will contact your staff for further clarification and recommendations and keep them posted on our progress.

Thank you for looking to the U.S. Institute for Environmental Conflict Resolution for assistance in this important matter.

Sincerely,



Kirk Emerson,
Director



Appendix B.

Executive Summary of *Reclaiming NEPA's Potential*

Reclaiming NEPA's Potential, Can Collaborative Processes Improve Environmental Decision Making?

Report from a March 1999 workshop on the National Environmental Policy Act.
Co-sponsored by the O'Connor Center for the Rocky Mountain West at the University of Montana and the Institute for Environment and Natural Resources at the University of Wyoming. The executive summary is reproduced here with permission.

Executive Summary

This book presents the proceedings of a workshop entitled "Communication and Consensus: Strategies for Fulfilling the Nation's Environmental Policy." [1] The workshop, held from March 20-23, 1999, was co-hosted by the Institute for Environment and Natural Resources (IENR) at The University of Wyoming and the Center for the Rocky Mountain West (CRMW) at The University of Montana. The President's Council on Environmental Quality had previously been commissioned both IENR and CRMW to pursue projects that could lead to improved implementation of the National Environmental Policy Act (NEPA). One key element in the IENR and CRMW efforts, and the main theme of the workshop, was to explore ways to incorporate collaborative decision-making approaches into the NEPA implementation framework currently used by federal agencies.

The workshop provided a structured forum for the exchange of ideas and debate on this theme. Thirty-six invited participants, representing varied perspectives, brought to the table their extensive experience with collaborative process and past and current NEPA practice. Workshop discussion focused on four key issues: (1) NEPA implementation history and current NEPA issues; (2) existing models for using collaboration or otherwise improving public involvement under NEPA; (3) barriers to integrating collaboration models under NEPA; and (4) strategies for integrating consensus and collaboration models under NEPA. Although there was general agreement on most of the issues considered at the workshop and presented in this proceedings book, unresolved differences of opinion emerged on a few key issues. We have attempted to fairly present these differences of opinion and provide accurate descriptions of the participants' diverse positions.

SUMMARY WORKSHOP OBSERVATIONS AND CONCLUSIONS

1.0 NEPA REVIEW

The NEPA Review Workgroup discussed NEPA's origins and its implementation history, with a particular focus on NEPA Section 101's provisions for broad, comprehensive environmental protection. The group concluded that NEPA implementation over the past 30 years has generally gravitated toward a narrow, procedural interpretation of the original Congressional mandate. Workgroup discussion generated several other observations and conclusions.

- Decisions and actions of the executive, legislative, and judicial branches of the federal government have shaped NEPA implementation and set guiding precedents, often emphasizing procedural compliance rather than comprehensive protection measures.
- Several “drivers of change” are currently influencing federal agencies’ perception of NEPA compliance and implementation. Influencing factors include frequent litigation, shrinking resources, changing Congressional mandates, the devolution of decision making to state and local levels, and increased public interest in decision-making participation.
- In response to EIS litigation, federal agencies have increasingly sought to produce “litigation-proof” documents. This defensive action tends to discourage experimental NEPA processes involving collaboration or larger scale analysis.[2]
- Recent efforts to change and improve NEPA implementation include legislation to limit the applicability of NEPA on specific federal projects; the 1997 CEQ NEPA effectiveness study; increased federal agency cooperation; a broader scope of environmental decision making; and Presidential use of NEPA as a grant of authority to preserve important aspects of our national heritage.
- Because NEPA’s Section 101 goals have not been incorporated into strategies for solving larger interagency or intergovernmental issues, these issues have rarely been subjected to thorough public discussion and environmental analysis. There is an opportunity for federal agencies to involve the public and other affected agencies early in the NEPA process and for agencies to use the NEPA process for strategic planning in broad geographic and ecological regions.

2.0 COLLABORATIVE MODELS

The Collaborative Models Workgroup initiated their discussion with a review of how opportunities for public participation have been incorporated into the NEPA process. Their review considered the evolution of public participation strategies, up to and including the recent advent of various forms of collaborative decision making. The group’s conclusions and observations include the following:

- During the two decades following NEPA’s passage, the public exercised their new right to participate in agency decision-making processes through public meetings and formal comment opportunities. Some people, dissatisfied with NEPA process outcomes, brought their concerns to the courts. In many instances, NEPA litigation successfully established agency accountability and responsibility. However, litigation has also resulted, at times, in a perception of “decision-making gridlock.”
- The public began to call for greater public involvement in governance during the 1980s and 1990s. Collaborative approaches, some proposed, should be tested and considered for their potential to reduce the costs of decision making, better utilize local knowledge and scientific expertise, and air technical and value-oriented debates in coordinated decision processes.

- Over the past decade, individuals, agencies, and governments have experimented with collaboration, both within and outside the NEPA process. Many collaborative approaches are characterized by volunteerism, inclusiveness, direct face-to-face communication among parties, and flexible designs that respond to changing circumstances and incorporate newly interested players as a project develops. Some people undertaking new processes believe collaborative approaches offer significant potential benefits: to reduce costs of decision making and litigation; to better utilize local knowledge and scientific expertise; and to marry technical and value-oriented debates in coordinated decision processes.
- Other recent innovations include the reintroduction of market mechanisms into some forms of environmental management, the rapid proliferation of decision-making coalitions, and agency experimentation with greater public involvement in the NEPA process.
- The workgroup laid out the basic NEPA process steps and examined roles that the public usually plays in each step. Three main types of public participation and collaboration in NEPA projects were identified: (1) traditional public involvement, (2) agency-initiated collaboratives, and (3) collaboration initiated by other interested parties.

Much remains to be learned about new approaches to public participation in decision making, particularly in NEPA-related decisions. The workgroup identified several important questions and concerns about infusing collaborative decision-making methods into NEPA: (1) To what extent can new collaborative processes supplement traditional decision-making methods? (2) Will these collaborative processes satisfy current democratic notions of full and balanced representation? and (3) What conditions are necessary for collaborative approaches to succeed and what conditions indicate that such approaches will not work? Chapter III includes a complete discussion of this group's conclusions and concerns.

3.0 BARRIERS AND STRATEGIES

At the beginning of the workshop, the Barriers Workgroup and the Strategies Workgroup discussed their respective issues independently. It soon became apparent that the two groups needed to coordinate their thinking. Accordingly, the groups spent much of the last day at the workshop in joint session. The combined report of these two workgroups is presented in Chapter IV. The key observations and conclusions of the combined workgroups included the following:

- In considering barriers to the use of collaborative decision making in NEPA implementation, participants identified four general categories: political, legal, administrative, and financial. They further identified specific critical barriers within these categories and directed strategies for overcoming these barriers. Each of the identified barriers and suggested strategies are listed and discussed in Chapter IV, and a summary listing is presented in Table IV-1.
- Currently, the federal government does not provide effective leadership to encourage the use of more flexible applications of NEPA. Administrative and CEQ failure to promote the use

of collaborative approaches to NEPA implementation has resulted in Congressional failure to provide financial support for collaborative initiatives.

- One of the critical barriers to supplementing the NEPA process with collaborative approaches is the lack of comprehensive documentation and analysis. Participants concluded that a series of pilot projects could test and demonstrate the effective use of collaboration. Pilot project evaluation and analysis could also fill existing knowledge gaps. These projects would use collaborative processes at the earliest stages of NEPA projects to foster community involvement, invite a diversity of views, and produce well-supported, environmentally-sound decisions. Although participants were not in agreement about how pilot projects should be promoted and implemented, there was strong support for further action on this suggestion.

[1] Although the workshop was convened under this title, the title of the proceedings document has been changed to more accurately reflect the direction of workshop discussions. The revised title is “Reclaiming NEPA’s Potential: Can Collaborative Processes Improve Environmental Decision Making?”

[2] CEQ, 1997a.

Appendix C.

Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156)

PUBLIC LAW 105-156—FEB. 11, 1998

ENVIRONMENTAL POLICY AND CONFLICT
RESOLUTION ACT OF 1998

Public Law 105–156
105th Congress

An Act

Feb. 11, 1998
[H.R. 3042]

To amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish the United States Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Environmental
Policy and
Conflict
Resolution Act of
1998.
20 USC 5601
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Environmental Policy and Conflict Resolution Act of 1998”.

SEC. 2. DEFINITIONS.

Section 4 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602) is amended—

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (9), (7), and (8), respectively;

(2) by inserting after paragraph (3) the following:

“(4) the term ‘environmental dispute’ means a dispute or conflict relating to the environment, public lands, or natural resources;”;

(3) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

“(6) the term ‘Institute’ means the United States Institute for Environmental Conflict Resolution established pursuant to section 7(a)(1)(D);”;

(4) in paragraph (7) (as redesignated by paragraph (1)), by striking “and” at the end;

(5) in paragraph (8) (as redesignated by paragraph (1)), by striking the period at the end and inserting “; and”; and

(6) in paragraph (9) (as redesignated by paragraph (1))—

(A) by striking “fund” and inserting “Trust Fund”; and

(B) by striking the semicolon at the end and inserting a period.

SEC. 3. BOARD OF TRUSTEES.

Section 5(b) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5603(b)) is amended—

(1) in the matter preceding paragraph (1) of the second sentence, by striking “twelve” and inserting “thirteen”; and

(2) by adding at the end the following:

“(7) The chairperson of the President’s Council on Environmental Quality, who shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.”.

SEC. 4. PURPOSE.

Section 6 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5604) is amended—

(1) in paragraph (4), by striking “an Environmental Conflict Resolution” and inserting “Environmental Conflict Resolution and Training”;

(2) in paragraph (6), by striking “and” at the end;

(3) in paragraph (7), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

“(8) establish as part of the Foundation the United States Institute for Environmental Conflict Resolution to assist the Federal Government in implementing section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331) by providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States; and

“(9) complement the direction established by the President in Executive Order No. 12988 (61 Fed. Reg. 4729; relating to civil justice reform).”.

SEC. 5. AUTHORITY.

Section 7(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5605(a)) is amended—

(1) in paragraph (1), by adding at the end the following:

“(D) INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION.—

“(i) IN GENERAL.—The Foundation shall—

“(I) establish the United States Institute for Environmental Conflict Resolution as part of the Foundation; and

“(II) identify and conduct such programs, activities, and services as the Foundation determines appropriate to permit the Foundation to provide assessment, mediation, training, and other related services to resolve environmental disputes.

“(ii) GEOGRAPHIC PROXIMITY OF CONFLICT RESOLUTION PROVISION.—In providing assessment, mediation, training, and other related services under clause (i)(II) to resolve environmental disputes, the Foundation shall consider, to the maximum extent practicable, conflict resolution providers within the geographic proximity of the conflict.”; and

(2) in paragraph (7), by inserting “and Training” after “Conflict Resolution”.

SEC. 6. ENVIRONMENTAL DISPUTE RESOLUTION FUND.

(a) REDESIGNATION.—Sections 10 and 11 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5608, 5609) are redesignated as sections 12 and 13 of the Act, respectively.

(b) ENVIRONMENTAL DISPUTE RESOLUTION FUND.—The Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5601 et seq.) (as amended by subsection (a)) is amended by inserting after section 9 the following:

20 USC 5608a.

“SEC. 10. ENVIRONMENTAL DISPUTE RESOLUTION FUND.

“(a) ESTABLISHMENT.—There is established in the Treasury of the United States an Environmental Dispute Resolution Fund to be administered by the Foundation. The Fund shall consist of amounts appropriated to the Fund under section 13(b) and amounts paid into the Fund under section 11.

“(b) EXPENDITURES.—The Foundation shall expend from the Fund such sums as the Board determines are necessary to establish and operate the Institute, including such amounts as are necessary for salaries, administration, the provision of mediation and other services, and such other expenses as the Board determines are necessary.

“(c) DISTINCTION FROM TRUST FUND.—The Fund shall be maintained separately from the Trust Fund established under section 8.

“(d) INVESTMENT OF AMOUNTS.—

“(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

“(2) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

“(3) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

“(A) on original issue at the issue price; or

“(B) by purchase of outstanding obligations at the market price.

“(4) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

“(5) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.”.

SEC. 7. USE OF THE INSTITUTE BY A FEDERAL AGENCY.

The Morris K. Udall Scholarship and Excellence in National Environmental and Native American Policy Act of 1992 (20 U.S.C. 5601 et seq.) (as amended by section 6) is amended by inserting after section 10 the following:

20 USC 5608b.

“SEC. 11. USE OF THE INSTITUTE BY A FEDERAL AGENCY.

“(a) AUTHORIZATION.—A Federal agency may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.

“(b) PAYMENT.—

“(1) IN GENERAL.—A Federal agency may enter into a contract and expend funds to obtain the services of the Institute.

“(2) PAYMENT INTO ENVIRONMENTAL DISPUTE RESOLUTION FUND.—A payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Environmental Dispute Resolution Fund established under section 10.

“(c) NOTIFICATION AND CONCURRENCE.—

“(1) NOTIFICATION.—An agency or instrumentality of the Federal Government shall notify the chairperson of the President’s Council on Environmental Quality when using the Foundation or the Institute to provide the services described in subsection (a).

“(2) NOTIFICATION DESCRIPTIONS.—In a matter involving two or more agencies or instrumentalities of the Federal Government, notification under paragraph (1) shall include a written description of—

“(A) the issues and parties involved;

“(B) prior efforts, if any, undertaken by the agency to resolve or address the issue or issues;

“(C) all Federal agencies or instrumentalities with a direct interest or involvement in the matter and a statement that all Federal agencies or instrumentalities agree to dispute resolution; and

“(D) other relevant information.

“(3) CONCURRENCE.—

“(A) IN GENERAL.—In a matter that involves two or more agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality), the agencies or instrumentalities of the Federal Government shall obtain the concurrence of the chairperson of the President’s Council on Environmental Quality before using the Foundation or Institute to provide the services described in subsection (a).

“(B) INDICATION OF CONCURRENCE OR NONCONCURRENCE.—The chairperson of the President’s Council on Environmental Quality shall indicate concurrence or nonconcurrence under subparagraph (A) not later than 20 days after receiving notice under paragraph (2).

“(d) EXCEPTIONS.—

“(1) LEGAL ISSUES AND ENFORCEMENT.—

“(A) IN GENERAL.—A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) that concern purely legal issues or matters, interpretation or determination of law, or enforcement of law by one agency against another agency shall not be submitted to the Foundation or Institute.

“(B) APPLICABILITY.—Subparagraph (A) does not apply to a dispute or conflict concerning—

“(i) agency implementation of a program or project;

“(ii) a matter involving two or more agencies with parallel authority requiring facilitation and coordination of the various Government agencies; or

“(iii) a nonlegal policy or decisionmaking matter that involves two or more agencies that are jointly operating a project.

“(2) OTHER MANDATED MECHANISMS OR AVENUES.—A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) for which Congress by law has mandated another dispute resolution mechanism or avenue to address or resolve shall not be submitted to the Foundation or Institute.”.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (as redesignated by section 6(a)) is amended—

(1) by striking “There are authorized to be appropriated to the Fund” and inserting the following:

“(a) **TRUST FUND.**—There is authorized to be appropriated to the Trust Fund”; and

(2) by adding at the end the following:

“(b) **ENVIRONMENTAL DISPUTE RESOLUTION FUND.**—There are authorized to be appropriated to the Environmental Dispute Resolution Fund established under section 10—

“(1) \$4,250,000 for fiscal year 1998, of which—

“(A) \$3,000,000 shall be for capitalization; and

“(B) \$1,250,000 shall be for operation costs; and

“(2) \$1,250,000 for each of the fiscal years 1999 through 2002 for operation costs.”.

SEC. 9. CONFORMING AMENDMENTS.

(a) The second sentence of section 8(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5606) is amended—

(1) by striking “fund” and inserting “Trust Fund”; and

(2) by striking “section 11” and inserting “section 13(a)”.

(b) Sections 7(a)(6), 8(b), and 9(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5605(a)(6), 5606(b), and 5607(a)) are each amended by striking “Fund” and inserting “Trust Fund” each place it appears.

Approved February 11, 1998.

LEGISLATIVE HISTORY—H.R. 3042 (S. 399):

CONGRESSIONAL RECORD:

Vol. 143 (1997): Nov. 13, considered and passed House.

Vol. 144 (1998): Jan. 29, considered and passed Senate.



Appendix D.

Overview of Recent U.S. Institute Activities

U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation

OVERVIEW

March 2001

The U. S. Institute for Environmental Conflict Resolution (the Institute) is a federal program established by the U. S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in environmental disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution (ECR), and can help parties in selecting an appropriate neutral. (See www.ecr.gov for more information about the Institute.)

During its second year of operation (FY 2000), the Institute was involved in over 60 cases and projects, including mediation cases, process facilitation, conflict assessments and process designs, dispute system designs, training design and delivery, case consultations, and case referrals.

The Institute's work has extended into 23 different states, including virtually all of the Western states along with Alaska, Connecticut, Florida, Hawaii, Maryland, Massachusetts, New Jersey, New York, Oklahoma, Tennessee, Texas, as well as Washington, D.C. and Puerto Rico. Several projects are national or multi-state in scope. The issues involved in these cases and projects include wildlife and wilderness management, recreational use of, and access to, public lands, endangered species, marine protected areas, watershed management, ecosystem restoration, wetlands protection, and urban infrastructure planning. The majority of the inquiries have come from federal agencies (headquarters and regional offices), but they also have come from federal district courts, state government agencies, tribes, and environmental groups.

The Institute has developed institutional arrangements with more than ten federal agencies; co-sponsored a major national conference on Alternative Dispute Resolution (ADR) and Natural Resources; hosted the Federal ECR Roundtable for ADR specialists at federal agencies; and launched a Federal ECR Partnership Program to support innovative and effective applications of ECR. Through these efforts, the Institute is providing useful services to federal agencies and is proving to be a valuable resource for all parties in conflict over environmental and natural resource issues.

Professional Services

During FY 2000, professional ECR services were provided directly by Institute staff or through contracts with over 30 private ECR practitioners. These services were paid for through interagency agreements or other institutional arrangements with federal agencies, including U.S. Environmental Protection Agency (EPA), U.S. Department of the Interior (DOI), U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Land Management (BLM), U.S. Department of Agriculture - Forest Service (USDA-FS), U.S. Navy, U.S. Air Force, Federal Highway Administration (FHWA), the Federal Energy Regulatory Commission (FERC), and U.S. Department of Justice (DOJ). Selected cases and projects are presented below.

Mediation Cases

- \$ *Jarbidge Road (Elko, Nevada)*. This active case concerns the closing of a road in the Humboldt-Toiyabe National Forest in northeastern Nevada and the potential impact of repairing the road on water quality in an adjacent stream and on an endangered species. This case was ordered to the Institute by the federal district court in Nevada. The Institute assisted the parties, some of whom were not represented by counsel, in jointly selecting a mediator, negotiating the initial conditions for mediation, and contracting with the neutral.

- \$ *Washington Navy Yard NPDES Permit (Washington, DC)*. This successfully mediated case involved an administrative appeal regarding the issuance of a water pollution discharge permit for the Washington Navy Yard. The mediation involved EPA, the Navy and the environmental organization, Earthjustice. Institute staff facilitated the parties' selection of a mediator, with whom the Institute then contracted.

- \$ *Sabino Canyon Target Range (Tucson, Arizona)*. The Institute assisted negotiations between the Coronado National Forest and the Tucson Rod and Gun Club regarding the design requirements for a target range. The Club is proceeding to submit a special use permit application and the Institute is on call to assist in any further deliberations within the formal permitting context.

- \$ *Dyer Wetlands (Bridgewater, Massachusetts)*. The Institute mediated a settlement of a Clean Water Act civil enforcement action involving the filling of wetlands on private land in Massachusetts. The EPA and the landowner reached an agreement confirmed in a consent decree regarding several technical and regulatory issues pertaining to wetland areas on a cranberry farm.

Convening, Facilitation, and System Design Projects

- \$ *Northwestern Hawaiian Islands Public Input Process*. The U.S. Departments of the Interior and Commerce, along with the Council on Environmental Quality, requested the assistance of the Institute in designing and conducting a public input process. The public input process was stipulated by the President in his directive to the two Secretaries to develop a joint

recommendation for a comprehensive management regime for ensuring strong and lasting protection of the coral reef ecosystem of the Northwestern Hawaiian Islands. Within the 90-day deadline established by the President's directive, the Institute, partnering with the Hawaii Justice Foundation with several Hawaii-based facilitators, conducted and documented input from seven public "visioning sessions" attended by over 430 people in Hawaii and Washington, D.C. The Institute received over 1,000 public comments which were summarized in the public input report prepared for the Secretaries.

\$ *NEPA Streamlining for Federal Highway Projects (national).* Federal transportation legislation (TEA-21) provides for interagency cooperation aimed at improving the quality and efficiency of environmental reviews of transportation projects nationwide. The Institute is developing a dispute resolution system for state and federal agencies involved in "environmental streamlining" efforts. The system includes an elevation procedure for disputes to the Secretary of Transportation, a general guidance document for agencies on conflict resolution, the selection and training of a cadre of qualified neutrals to help implement the system. Steve Lee, a facilitator experienced with transportation issues, is assisting with the project under contract to the Institute along with several other dispute resolution experts.

\$ *Everglades Restoration (South Florida). Conflict Assessment and System Design (South Florida).* The Institute co-facilitated two Everglades Task Force meetings that focused on dispute resolution and draft federal legislation for the South Florida Ecosystem Restoration Program. Partnering with the Florida Conflict Resolution Consortium, the Institute is assisting in designing a system to effectively manage interagency and intergovernmental conflicts regarding the restoration effort. In addition, the Institute is conducting an assessment of federal interagency conflicts focused primarily on scientific issues.

\$ *Bison and Elk Management: Situation Assessment and Process Design (Jackson, Wyoming).* Institute staff conducted a situation assessment to engage the public in planning for bison and elk herd management in the upper Snake River watershed encompassing the National Elk Refuge, the Grand Teton National Park, and the Bridger-Teton National Forest. Assisting the Institute were the University of Wyoming's Institute for Environment and Natural Resources and the Meridian Institute. The project also involved close coordination with the state of Wyoming and the Wyoming Game and Fish Department as well as consultation with eleven area Native American tribes. Over 130 individuals and organizations were interviewed over a four-month period. Currently, the agencies are conducting a pre-scoping process prior to initiating a formal NEPA process.

\$ *Barry M. Goldwater Range Assessment and Process Design (southwestern Arizona).* Congress recently authorized the continuation of the withdrawal of the Barry M. Goldwater Range for military use and gave joint responsibility for planning and management of natural and cultural resources to the Air Force and the Marines. The Institute developed a strategy for public involvement regarding an Integrated Natural Resource Management Plan for the Range and a plan for interagency coordination with parallel resource planning processes being

conducted on neighboring federally owned lands. This strategy included a consultation plan for Native American tribes in the area.

§ *Critical Habitat Determination and Designation.* The Institute and a facilitation team led by Lucy Moore completed this project for USFWS. The project involved extensive interviewing of litigants and other parties concerned with how critical habitat for endangered species is determined and designated by USFWS. Two national workshops were held and a summary report issued. This project has informed USFWS's development of guidelines on critical habitat.

Roster System and Referral Activity

The roster and related referral system has been in place since February 2000. The roster is the Institute's primary source for selecting its sub-contractors and for referring neutrals to parties in dispute. As of March 2001, there were 142 qualified practitioners on the Institute roster located in 36 different states. Their experience ranges from mediation of court-referred environmental disputes to facilitation of complex consensus-building processes and policy dialogues. On average, these practitioners have handled approximately 29 cases (the range varies from 5 to 150 cases) prior to their listing on the roster. The Institute continues to recruit roster members, particularly for geographic balance and diversity in professional experience.

During FY 2000, over 30 practitioners provided services on contract with the Institute, most of whom are on the roster. In addition, the Institute's roster manager, Joan Calcagno, has provided selected profiles of roster members for over 30 cases and projects since she began searching the roster database in February 2000. In addition, 20 EPA ADR personnel have had direct access to search the roster since August 2000.

Training Services

The Institute has provided several training seminars and workshops to users of ECR, sponsored primarily by federal agencies, among them DOI, EPA, USDA- FS, and FERC. One-hour training orientation sessions have also been provided to a number of agencies, as were training activities in the context of conference panels and workshops provided by Institute staff. Additional requests for training were referred by the Institute to other providers. In FY 2001, staff will investigate the potential and feasibility for a standing training program at the Institute.

Program Delivery

In addition to the case and project related professional services outlined above, the Institute staff works on a variety of educational initiatives and demonstration programs consistent with its mission as a federal program to increase and improve the appropriate use of ECR by federal agencies and other stakeholders.

ADR and Natural Resources Conference

The Institute co-sponsored a national conference on ADR and Natural Resources with DOI, USDA – FS, and The University of Arizona’s Udall Center for Studies in Public Policy in May 2000. The two-and-a-half day conference drew over 425 attendees from across the nation and from Mexico and Chile, including federal and state government staff, tribal representatives, environmentalists, natural resource users, and ADR practitioners. Close to 150 people attended several eight-hour pre-conference training sessions. Five conference plenary sessions and fifty-seven panel sessions generated tremendous enthusiasm for the diversity of work being conducted in the field of environmental conflict resolution, underscoring the potential the Institute has to contribute to the field. An extensive conference evaluation revealed the conference to be an overwhelming success and the interest in future conferences to be very strong. The proceedings from the May conference are now available from the Institute website and on CD.

The 9th Circuit Demonstration Project

In cooperation with the Western Justice Center Foundation and the U.S. District Court in Oregon, the Institute has been conducting a pilot program for environmental mediation in the Oregon federal court. Six cases have gone into mediation through the pilot, which is using a panel of Oregon-based neutrals. The project has been coordinated in Oregon by Elaine Hallmark, an attorney-mediator based in Portland, who has reviewed more than 30 cases for possible referral to mediation. The possibility of other pilots or court-referred environmental cases is being explored.

Federal ECR Partnership Program

This program provides financial support and in-kind assistance for specific cases or projects being sponsored by federal agencies. An agency must provide at least 50 percent of the project funding and meet several selection criteria to qualify for Institute co-sponsorship. The program is designed to increase awareness and use of ECR within the federal government; provide incentives and guidance for the effective use of ECR; and encourage innovative applications and demonstration projects. The Institute will be drawing on its capitalization fund to place over \$400,000 per year over the next three years through this program. The first four demonstration projects funded through this partnership program are:

- \$ *Fire Island National Seashore Negotiated Rulemaking (Fire Island, New York).* The Institute is assisting Fire Island National Seashore, a unit of the NPS, to develop new off-road driving regulations through the use of a multi-stakeholder negotiated rule making process. Fire Island is a roadless park with over 4000 private homes on it. Current regulations are viewed as inadequate to protect the nesting sites of the endangered Piping Plover and the island’s fragile dune system.

- \$ *Tongass National Forest Aircraft Noise Conflict (Juneau, Alaska).* The USDA - FS grants permits for helicopter overflights and landing on the Juneau Icefield Glacier in Tongass National Forest. Recent requests for permits would more than double landings by 2004. Noise associated with helicopter use is problematic for both users of the National Forest and for

residents of Juneau. The Institute is helping to fund a collaborative problem-solving process focused not only on the request for more landing permits (and the development of an Environmental Impact Statement for the request), but also on the larger issues of noise pollution in the Juneau area.

- \$ *Dillon BLM Resource Management Plan (Dillon, Montana)*. The Montana BLM Office is developing a resource management plan for BLM land around Dillon, near the Montana and Dakotas border. Current discussions about resource use in this area have become contentious and polarized. The Institute is providing assistance for a situation assessment and process design that will precede a multi-stakeholder collaborative effort to develop the plan. This represents the first time the Montana BLM has attempted a non-traditional approach for stakeholder involvement in resource planning.

ECR Participation Support Program

This program will be geared to non-federal stakeholders, providing in-kind and financial support for ECR demonstration projects. Two precursors to this program include:

- \$ *Cormorant Management in Eastern Lake Ontario*. At the request of New York State's Department of Conservation, the Institute co-sponsored a conflict assessment regarding the impact of double-breasted cormorant (a seabird) populations on declining bass fisheries in eastern Lake Ontario. The assessment report was completed by Gregory Sobel and Susan Senecah on contract to the Institute.

- \$ *Facilitation of Channel Islands Marine Reserve Process*. The Institute is providing process design and co-facilitation services for a multi-stakeholder planning process jointly convened by the Channel Islands National Marine Sanctuary and the California Department of Fish and Game. The purpose of this project is to develop consensus-based recommendations for establishing a "no-take" Marine Reserve in the sanctuary

Program Evaluation

The Institute is setting up a self-administered program evaluation to track and provide valuable information on the performance of the Institute, its staff, and contractors to guide internal improvements and inform potential parties and supporters of ECR on case and project outcomes. The evaluation system design is being developed in association with the Policy Consensus Initiative and two state dispute resolution programs (Massachusetts and Oregon). The long-term objective of this cooperative initiative is to develop a general program evaluation framework that can be used by other federal and state agencies providing ECR assistance.

Managing Scientific and Technical Information in Environmental Cases

Together with the Western Justice Center Foundation and Resolve, Inc., the Institute co-sponsored and participated in the research, drafting, and publication of a manual of the principles and best practices for

mediators and facilitators involved in science-intensive environmental disputes. This report was premiered at the May conference and is now available electronically from the websites of all three co-sponsors.

For Inquiries and General Information About the Institute, contact:

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Internet: <http://www.ecr.gov>

USIECR: Revised 3/01/01

Appendix E.

List of Stakeholder Interviews and Meetings

Stakeholders Interviewed

Susan Absher	U.S. Environmental Protection Agency	Washington, DC
John Antonio	Native American Liaison, Region 2, U.S. Fish & Wildlife Service	Albuquerque, NM
Dinah Bear	General Counsel, Council on Environmental Quality	Washington, DC
Elizabeth Bell	Associate, Troutman Sanders LLP	Washington, DC
Harold Bergman	Director, Institute for Environment and Natural Resources, University of Wyoming	Laramie, WY
Gail Bingham	President RESOLVE Inc.	Washington, DC
Brent Blackwelder	President, Friends Of The Earth	Washington, DC
Lynton Caldwell	Arthur F. Bentley Professor Emeritus of Political Science, Indiana University	Bloomington, IN
Hamilton Candee	Natural Resources Defense Council	San Francisco, CA
Drew Caputo	Natural Resources Defense Council	San Francisco, CA
Nina Chambers	Sonoran Institute	Tucson, AZ
Ray Clark	Formerly with U.S. Army	Alexandria, VA
Adena Cook	Public Lands Director, Blue Ribbon Coalition	Idaho Falls, ID
Mary Coulombe	Director Timber Access and Supply, American Forest and Paper Association	Washington, DC
Caren Cowen	Executive Secretary, New Mexico Cattle Growers Association	Albuquerque, NM
Bob Cunningham	Associate Director of Planning, Forest Service, U.S. Department of Agriculture	Washington, DC
Susan Daggett	Managing Attorney Denver Office, Earth Justice	Denver, CO
Debbie Dalton	Conflict Prevention and Resolution Center, U.S. Environmental Protection Agency	Washington, DC
Bruce Davies	NEPA Liaison, Northwestern Indian Fisheries Commission	Olympia, WA
Hilda Diaz-Soltero	Associate Chief for Natural Resources, Forest Service, U.S. Department of Agriculture	Washington, DC
Bob Dreher	Of Counsel, Environmental Practice Group, Troutman Sanders LLP	Washington, DC
Frank Dukes	Director, Institute for Environmental Negotiation, University of Virginia	Charlottesville, VA
Glenn Eurick	Director of Environmental Relations, Barrick Gold Corporation	Salt Lake City, UT

Mike Fish	Fiber Supply Planning, Weyerhaeuser	Longview, WA
Maggie Fox	Deputy Executive Director, Sierra Club	Boulder, CO
Elena Gonzalez	Dispute Resolution Specialist and Counsel for Dispute Resolution Policies and Programs, U.S. Department of the Interior	Arlington, VA
Kim Graber	National Wildlife Federation, Staff Attorney	Boulder, CO
Horst Greczmiel	Associate Director for NEPA Oversight, Council on Environmental Quality	Washington, DC
Patricia Haman	U.S. Environmental Protection Agency	Washington, DC
John Hardaway	Anglo Gold	Englewood, CO
Denis Hayes	President, The Bullitt Foundation	Seattle, WA
Richard Innes	Conservation Strategies, L.L.C.	Washington, DC
Tom Jensen	Partner, Troutman Sanders LLP	Washington, DC
Daniel Kemmis	Director, O'Connor Center for the Rocky Mountain West, University of Montana	Missoula, MT
Doug Kenney	Research Associate, University of Colorado School of Law	Boulder, CO
Linda Lance	Vice President of Public Policy, The Wilderness Society	Washington, DC
Neil Lawrence	Natural Resources Defense Council	San Francisco, CA
Mike Leahy	Defenders of Wildlife	Washington, DC
Dan Luecke	Environmental Defense Fund, Rocky Mountain Regional Director	Boulder, CO
Scott McCreary	Principal, CONCUR, Inc.	Berkeley, CA
Chris McKenzie	Executive Director, League of California Cities	Sacramento, CA
Bill Meadows	President, The Wilderness Society	Washington, DC
Anne Miller	Deputy Director, U.S. Environmental Protection Agency	Washington, DC
Frank Mitchney	Division of Environmental Affairs, Mid-Pacific Region, Bureau of Reclamation	Sacramento, CA
Gillian Mittlesteadt	Tulalip Natural Resources, Tulalip Tribe	Issaquah, WA
Lucy Moore	Principal, Lucy Moore and Associates	Santa Fe, NM
Joe Montgomery	U.S. Environmental Protection Agency	Washington, DC
Reed Noss	Conservation Science Inc.	Corvallis, OR
Rosemary O'Leary	Professor and Interim Director of Campbell Public Affairs Institute, Syracuse University	Manlius, NY
Luther Propst	Executive Director, Sonoran Institute	Tucson, AZ
Steve Quarles	Timber Lobbyist/Environmental Litigator, Crowell Moring LLP	Washington, DC

Cliff Rader	U.S. Environmental Protection Agency	Washington, DC
Steve Reynolds	Director, Wyoming Business Council	Cheyenne, WY
Margaret Shannon	Associate Professor, Environment and Society Institute, SUNY Buffalo, Amherst Campus	Amherst, NY
Fred Skaer	Director, Federal Highways Administration, U.S. Department of Transportation	Washington, DC
Ron Skates	Tribal Technical Assistance, U.S. Fish & Wildlife Service	Bozeman, MT
Bob Smythe	Potomac Resource Consultants	Chevy Chase, MD
Bill Snape	Vice President for Law and Litigation, Defenders of Wildlife	Washington, DC
Rhey Solomon	Deputy Director NEPA, Forest Service, U.S. Department of Agriculture	Washington, DC
Jim Souby	Executive Director, Western Governors' Association	Denver, CO
Charlie Sperry	Stewardship Director, Henry's Fork Foundation	Ashton, ID
Elaine Suriano	U.S. Environmental Protection Agency	Washington, DC
Craig Thomas	Save the Sierras	Placerville, CA
Don Treasure	Environmental Specialist, Bureau of Reclamation	Denver, CO
Bob Ward	Director, Conflict Prevention and Resolution Center, U.S. Environmental Protection Agency	Washington, DC
Dana Wolf	Sierra Club	Washington, DC
Greg Wolf	Assistant to Governor Kitzhaber, Oregon State Capitol	Salem, OR
Julia Wondelleck	Associate Professor, School of Natural Resources and Environment, University of Michigan	Ann Arbor, MI
Barbara Yuhas	Director of Natural Resources, International City/County Management Association	Washington, DC

Additional Meetings and Briefings

Senate Environment and Public Works Committee Staff

NEPA Liaisons (organized by CEQ)

Department of Energy NEPA Compliance Officers

Federal ECR Round Table

Arizona Common Ground Round Table

Appendix F.

Federal Register Notice and Request for Comment

2. Update on data for the Federal white-collar pay setting process
3. Employee Benefits Survey: status and data availability
4. Data on working conditions from BLS
5. Bonuses, lump-sum payments, and other forms of variable pay
6. Topics for the next meeting

Wednesday, June 6, 2001

9:30 a.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Update on program developments
 - a. Consumer Price Index
 - b. International Price Indexes
 - c. Producer Price Indexes
2. Topics for the next meeting

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. Report on worker and case circumstances data from the 1999 Survey of Occupational Injuries and Illnesses
2. Discussion of changes to the Survey of Occupational Injuries and Illnesses resulting from the revision of the OSHA record keeping rule
3. Report on the status of the Survey of Respirator Use and Practices
4. Update on the introduction of the North American Industry Classification System into the Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational injuries
5. Proposed FY 2002 budget
6. Topics for the next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202-691-5970.

Signed at Washington, DC this 30th day of April, 2001.

Katharine G. Abraham,
Commissioner.

[FR Doc. 01-11907 Filed 5-10-01; 8:45 am]

BILLING CODE 4510-24-P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution

National Environmental Policy Act Pilot Projects; Comment Request; Announcement of Workshop

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Meeting notice and request for public comment.

SUMMARY: At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and appropriate dispute resolution processes can improve the implementation of the National Environmental Policy Act (NEPA) in the context of federal lands and natural resource management issues. In the past months, the U.S. Institute, with the assistance of the Meridian Institute, has sought input from a diverse group of individuals representing environmental organizations, resource users, federal, state and local governments, tribes, participants in local and regional collaborative processes, and NEPA experts. The purpose of these individual conversations was to learn more about (1) What specific concerns or issues should be addressed by pilot projects, (2) what parameters should define the pilot projects initiative, (3) what criteria should be used to select pilot projects, (4) what institutional mechanisms would be needed to assure project oversight, implementation, and evaluation, and (5) how to maximize the likelihood that positive lessons learned from the pilots can be mainstreamed and begin to influence the implementation of NEPA in the future.

A number of perceived problems with both NEPA implementation and collaborative processes were identified through these early conversations. Among the reported problems with NEPA implementation were:

- Inconsistent implementation of NEPA's statutory requirements, implementing regulations and agency guidelines;
 - Inadequate coordination among federal agencies with overlapping jurisdictions and inadequate intergovernmental coordination with state agencies;
 - Overemphasis on NEPA documentation and litigation protection, rather than sounder strategic planning and decision-making;
 - Inefficient and duplicative processes; and
 - Inadequate attention to realizing the goals laid out in Section 101 of NEPA.
- The issues relating to collaborative processes and conflict resolution can be placed into four organizational contexts:
- Interagency collaboration,
 - Intergovernmental collaboration,
 - Governmentally organized multi-stakeholder collaboration, and

- Privately organized collaborative processes.

Across these contexts, various problems were raised, such as:

- A lack of guidance on options for agencies and inconsistent approaches to collaboration resulting in confusion;
- The resource intensive nature of such processes and inadequate process funding;
- Lack of clarity on stakeholder roles and responsibilities, and inadequate stakeholder guidance;
- Maintaining balanced stakeholder representation; and
- Overemphasis on process of collaboration as an end itself and inadequate attention to planning outcomes, decision-making, and implementation.

The U.S. Institute proposes that pilot projects may be useful in addressing the perceived challenges of NEPA implementation and providing clearer guidance regarding the use of collaborative processes in NEPA implementation to agencies, state and local governments, tribes and non-governmental interests with respect to public lands and natural resources management issues. Specifically, pilot projects could:

- Clearly distinguish problems and concerns related to NEPA and the manner in which NEPA is being implemented from concerns about other environmental statutes and/or broader societal concerns;
- Demonstrate innovative and practical solutions to clearly delineated NEPA implementation problems; and
- Provide information about the conditions under which collaborative problem solving, consensus-building, and dispute resolution processes can improve implementation of NEPA.

There are differing views regarding the effectiveness of NEPA implementation, reflecting legitimate underlying differences in values and perspectives about the nature and extent of the environmental impacts of proposed projects and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Collaborative processes and conflict resolution strategies often involve or implicate NEPA review and analysis activities. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

The U.S. Institute recommends four basic features for a pilot projects initiative. First, there must be a sufficient number of pilot projects from which to draw reliable lessons across the four different contexts of collaborative processes (i.e., interagency, intergovernmental, governmentally organized, and privately organized) and across a spectrum of agencies that have responsibility for lands and natural resource management issues.

Second, it is important not to "reinvent the wheel." The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. For this reason, the pilot projects under this initiative should be oriented less toward introducing a new concept or approach and more toward solving specific problems regarding the use of collaboration and dispute resolution in NEPA implementation. At the same time, the initiative should include research and a retrospective analysis of past and present NEPA projects involving collaborative and dispute resolution processes, in parallel with current projects in the pilot program.

Third, pilot projects are not enough in and of themselves. Evaluation of the results of the pilot projects is essential in order to learn from both the successes and the failures. Articulating the criteria for assessing the outcomes of these pilot projects will be central to such an initiative. Dissemination of the results of the evaluations is essential to ensure that the lessons learned from these pilot projects are broadly understood and utilized.

Finally, a transparent, open, and public process must be designed and managed to build consensus on the desired outcomes for this pilot projects initiative in relation to NEPA implementation in connection with federal lands and natural resource management issues. The interviews conducted thus far, along with this request for public comment, are a step toward laying the initial foundation for such a process.

The U.S. Institute would like comments on how it can assure a balanced and effective approach to developing and managing such pilot projects. The U.S. Institute seeks written public comment and direct input at two public workshops on the approach it proposes to take to the NEPA pilot projects initiative. Based on the comments received from this notice and the public workshops, in addition to the feedback from earlier meetings and interviews, the U.S. Institute will provide a report and recommendations

to the Senators for their consideration. The supplemental information below provides greater detail on the preliminary concepts under consideration.

Based on the interviews conducted thus far and a review of the literature, the supplemental information provides a review of the perceived problems with NEPA implementation and collaborative processes, as well as the preliminary recommendations for the design of a pilot projects initiative to address the request of the Senators.

DATES: Comments must be submitted on or before June 25, 2001. The public workshops will be held in Denver, Colorado on June 8, 2001 and Washington, DC on June 14, 2001. A balanced set of stakeholder representatives will be invited to attend the workshops, which will also be open to the public. An opportunity will be provided for public comment. The meetings will begin at 8:30 a.m. and conclude at approximately 4 p.m. Members of the public who wish to attend one of the meetings are requested to contact the Meridian Institute (see **ADDRESSES** section) by June 1, 2001 so that a sufficient number of materials can be prepared and directions to the facility can be provided. Space may be limited, thus a RSVP is strongly encouraged.

ADDRESSES: Direct comments to: Meridian Institute, Attn. Tutti Tischler, P.O. Box 1829, Dillon, Colorado, 80435. Fax: 970-513-8348, e-mail: ttischler@merid.org by no later than June 25, 2001.

The meeting locations are:
June 8, 2001—Embassy Suites at Denver Airport, Conference Center, 4444 North Havana, Denver, CO
June 14, 2001—GSA National Capitol Region Training Center, Rooms A & B, 490 L'Enfant Plaza, Suite 3207, Washington, D.C.

If you are interested in attending either public workshop, please contact Ms. Tutti Tischler by June 1, 2001, Meridian Institute, P.O. Box 1828, Dillon, Colorado 80435, phone: 970-513-8340 ext. 252, fax: 970-513-8348, or e-mail: ttischler@merid.org. Ms. Tischler can provide directions to both meeting locations.

FOR FURTHER INFORMATION CONTACT: Logistical Information: Tutti Tischler, Meridian Institute, P.O. Box 1828, Dillon, Colorado 80435, phone: 970-513-8340 ext. 252, fax: 970-513-8348, or e-mail: ttischler@merid.org for directions to either meeting location and other related information.

Substantive Information: Sarah Palmer, U.S. Institute for Environmental

Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701, fax: 520-670-5530, phone: 520-670-5299, e-mail: palmer@ecr.gov

SUPPLEMENTARY INFORMATION:

I. Overview

A. The Senators' Request

At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and appropriate dispute resolution processes can improve the implementation of the National Environmental Policy Act (NEPA). The Senators have asked specifically about the potential application of collaborative approaches to NEPA activities in the context of natural resources management and public lands issues. In order to respond to this request, and at the suggestion of the Senators, the U.S. Institute is seeking input from those with interest and experience in NEPA review activities and collaborative processes.

B. The U.S. Institute for Environmental Conflict Resolution

Congress established the U.S. Institute in 1998 in the Environmental Policy and Conflict Resolution Act (Pub. L. 105-156). The Institute's primary purpose is to assist parties in resolving environmental, natural resource, and public lands conflicts. It was also charged with assisting in achieving the substantive goals of NEPA laid out in Section 101. The U.S. Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch located in Tucson, Arizona and overseen by a board of trustees appointed by the President. The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The U.S. Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict.

C. Background and Context of the NEPA Pilot Projects Initiative

This project builds on the results of a workshop co-sponsored by the Institute for Environment and Natural Resources

at the University of Wyoming and the O'Connor Center for the Rocky Mountain West at the University of Montana in March of 1999 and reported on in "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?" The workshop focused on the potential for improving NEPA through the use of collaborative processes.

Chief among the important questions raised at this workshop were:

- How can both national and local interests be properly considered and appropriately balanced through collaborative NEPA processes?
- To what extent may multi-stakeholder collaborative groups participate in NEPA reviews and affect natural resource management decisions?
- When should cooperating agency status be granted to state and local governments and how can such cooperation be managed most fairly and productively?
- How can collaborative processes be used to improve the implementation of NEPA and in particular help achieve the substantive goals stated in Section 101?

In 1995, coinciding with the twenty-fifth anniversary of the passage of NEPA, the Council on Environmental Quality (CEQ) undertook a study of the effectiveness of NEPA implementation. This report, which refers to NEPA as a "framework for collaboration," focused on five critical areas within which improvements could be made to the implementation of NEPA, including:

- Strategic planning—the extent to which agencies integrate NEPA goals into their internal planning processes at an early stage;
- Public information and input—the extent to which an agency provides information to and takes into account the views of the surrounding community and other interested members of the public during its planning and decision-making processes;
- Interagency coordination—how well and how early agencies share information and integrate planning responsibilities with other agencies;
- Interdisciplinary place-based approach to decision making that focuses the knowledge and values from a variety of sources on a specific place; and
- Science-based and flexible management approaches once projects are approved.

This current effort is guided by an interest in soliciting broad-based and balanced feedback on a pilot projects initiative, designing a well-managed and transparent project, and providing timely and useful information. Based on

the Senators' request and with the assistance of the Meridian Institute, the U.S. Institute is seeking input from those with interest and experience in NEPA review activities and multi-stakeholder collaborative processes. To date, the U.S. Institute and Meridian staff have conducted approximately fifty interviews with individuals representing a diversity of interests and perspectives on this initiative.

D. Working Definitions

For the purpose of this draft document, the following working definitions will be used:

Collaboration and Collaborative Processes involve people who represent diverse interests, perspectives, and institutions that agree to work together to identify problems, share information, and, where possible, develop mutually acceptable solutions. Collaborative processes frequently take place prior to a formal decision being made by the responsible institution. The term collaboratives is sometimes used to refer to privately organized rather than governmentally organized collaborative processes.

Consensus-Building Processes constitute a form of collaboration that explicitly includes the goal of reaching a consensus agreement on policy matters, environmental conflicts, or other issues in controversy. Consensus is often, although not always, defined as "no dissent." Consensus building processes often, although not always, involve the assistance of a neutral convenor, facilitator, or mediator.

Dispute Resolution Processes aim to resolve specific and definable disputes over formal agency decisions that have been or are about to be made. The parties to a dispute resolution process are typically entities that can be granted standing to participate in the dispute resolution process. Under this definition, litigation is a form of dispute resolution process. The terms *appropriate or alternative dispute resolution* refer to non-adversarial processes that take place in advance of or in conjunction with formal litigation usually involving a neutral mediator to assist the parties in their negotiations.

Non-governmental interests refer broadly to non-governmental organizations (NGOs), such as national environmental groups, local citizens groups, and other public interest oriented groups, as well as companies, associations, and organizations representing commercial and private sector interests. Given the focus on federal lands and natural resource management issues in this document, non-governmental interests also include

resource users such as ranchers, loggers, timber companies, miners, mining companies, oil and gas companies, etc.

Stakeholders refers to the individuals, organizations, and institutions that have a stake in the outcome of a decision because they are either directly affected by the decision or have the power to influence or block the decision.

II. Findings From Preliminary Research and Interviews

A. Introduction

Based on a review of currently available literature and the results of the interviews described above, a number of challenges appear to be associated with NEPA implementation, as well as with the use of collaborative processes initiated in conjunction with NEPA implementation (whether the collaborative process is before or early in a NEPA process or, alternatively, after the NEPA process has begun and actual or potential disputes have emerged). The challenges with both NEPA implementation and collaborative approaches, which are reviewed below, should be considered as the basis for focusing the pilot projects.

B. Reported Problems Related to NEPA Implementation

Some of the stakeholders interviewed expressed concern about whether the Senators who initiated the request or the U.S. Institute believe "NEPA is broken and needs to be fixed" and, if so, whether there is a belief that the use of collaboration and dispute resolution is the way to fix the problem. It is important to point out that almost without exception the stakeholder representatives interviewed indicated they do not believe there is a problem with the statute itself, but many felt there are concerns with how the statute is being implemented.

The interviews also evidenced concerns about the underlying authority and standards for agency decisions contained in other environmental statutes. In some cases the criticisms initially leveled at the NEPA process were found to be based primarily on concerns with requirements of other substantive laws. In the case of federal lands and natural resource management issues, the statutes that intersect with NEPA include but are not limited to the Endangered Species Act (ESA), the Federal Lands Policy and Management Act (FLPMA), the National Forest Management Act (NFMA), and the Clean Water Act (CWA).

Since the focus of this effort is on the use of collaborative processes and appropriate dispute resolution in NEPA

implementation, it will be important to clearly distinguish between perceived problems and concerns with the authority and standards of decision making contained in other statutes, and perceived problems and concerns with how agencies are fulfilling their NEPA duties and obligations. While this will be a challenge when identifying criteria for selecting pilot projects, it will be even more of a challenge in evaluating the effectiveness of the pilot projects and translating any new insights from the pilots to concrete suggestions for improving NEPA implementation.

Some stakeholders have suggested that the U.S. Institute undertake a systematic retrospective analysis of collaboration and NEPA implementation to help inform the development of clearly delineated problem statements with respect to the pilot projects initiative. The U.S. Institute agrees with the need to have clearly delineated problem statements that can be used to develop criteria for selecting and evaluating pilot projects. However, it appears that there is sufficient clarity regarding problems reported with NEPA implementation to proceed with the development of a pilot initiative, which would include a systematic retrospective analysis in parallel with the pilot projects.

From its interviews and a preliminary review of the literature, the U.S. Institute has compiled the following list of perceived problems with NEPA implementation.

1. **Inconsistent NEPA Implementation.** Inconsistent implementation and interpretation by lead federal agencies of the statutory requirements of NEPA and the CEQ implementing regulations and guidelines.

2. **Efficiency and Effectiveness.** How to "streamline" NEPA implementation by making it more efficient, less time consuming, and equally, if not more, effective.

3. **Inappropriate Timing of Interagency or Intergovernmental Coordination.** Many times a lead agency consults with other agencies with overlapping regulatory authority after alternatives have been identified and publicly discussed with stakeholders, only to find that one or more of the alternatives under consideration is unacceptable to the agency with overlapping jurisdiction.

4. **Overemphasis on Documentation with Insufficient Attention to Planning and Decision Making.** There is an excessive focus on NEPA documentation and efforts to make NEPA documents "litigation proof" rather than using NEPA to improve strategic planning and decision-making.

5. **Inadequate Attention to Section 101.** CEQ's regulations for implementing the procedural provisions of NEPA (40 CFR 1502.2(d)) states that an environmental impact statement:

Shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

Section 101 of the Act includes the declaration of environmental policy that is the cornerstone of NEPA. Section 102(1) of the statute directs that,

To the fullest extent possible the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.

Some stakeholders believe there has been inadequate attention paid to the requirements of NEPA and its implementing regulations.

C. Reported Problems Associated With But Not Limited to NEPA Implementation

Both the interviews and the NEPA-related literature cite two additional issues that influence the NEPA implementation process but are not exclusive to that process. The first is information management and use of technical information. The second issue is the role of the Federal Advisory Committee Act in the NEPA process.

1. Information and Information Technology Related Problems

The quality of NEPA analysis depends in large part on the quality of information that is available to and considered by decision-makers and the general public. As a consequence, a number of reported information and information technology related problems may warrant consideration in the design of pilot projects. These include:

a. **Lack of Baseline Data.** The lack of high quality baseline environmental data, especially for land management agencies, that can be periodically updated and used as the basis for NEPA analysis, often results in the re-creation of high quality data on a case-by-case basis.

b. **Insufficient Utilization of Information Technology.** Information technology, especially decision-support tools and geographic information systems are not widely available or are under-utilized.

c. **Excessive Data Demands.** Guidance is needed on how to identify what data would be useful in improving the quality of the decision. While thorough documentation and requests for

additional information are often warranted, excessive data generation and reporting can overwhelm the ability of decision makers and the public to understand the key points.

2. The Federal Advisory Committee Act (FACA)

Federal agencies have the option of utilizing citizen advisory committees and work groups to advise agencies during the NEPA process. However, many report real and perceived limitations to the use of a federal advisory committee.

a. **Limitations and Perceptions.** Most federal agencies are limited in the number of advisory committees they can establish. In addition, there is a widespread perception that the FACA can be an impediment to undertaking governmentally organized multi-stakeholder collaboration. These real and perceived limitations can create incentives to circumvent the requirement to establish an official advisory committee when in reality a FACA-chartered committee may be the best course of action.

b. **Advisory vs. Decisional.** Federal advisory committees advise agencies on specific issues. There is a need for clearer guidance about how to ensure governmentally organized multi-stakeholder collaboration processes maintain this advisory role and yet, where appropriate, strive to achieve a consensus that includes commitments from the sponsoring agency (akin to what takes place in a regulatory negotiation).

D. Reported Problems Associated With Collaborative Processes and Dispute Resolution

From the literature surveyed and the interviews conducted, the U.S. Institute and Meridian Institute staff identified a number of perceived problems with the use of collaborative and appropriate dispute resolution processes. It was apparent from the interviews that it is useful to distinguish between among four types of collaborative processes based on their organizational context:

- Interagency collaboration and coordination involving affected agencies within the federal government;
- Intergovernmental collaboration and coordination involving the lead federal agency and affected agencies from other levels of government, including tribal, state, and local government;
- Governmentally organized multi-stakeholder collaboration that is initiated and organized by the lead federal agency, or a cooperating governmental agency, and involves

representatives of affected non-governmental interests; and

- Privately organized collaborative processes that are initiated, organized, and conducted by non-governmental interests who have a stake in the outcome of agency decisions where there is limited or no direct involvement of the lead federal agency.

While specific issues and concerns were raised within each of these contexts, there were several cross-cutting problems reported, including:

1. Problems That Arise When Initiating Collaborative Processes

a. **Lack of Guidance for Deciding How to Collaborate.** Agencies lack guidance on whether and how to engage in multi-stakeholder collaborative processes, separate one-on-one consultations with stakeholder representatives, or standard public participation techniques. In some cases, such processes are initiated after an agency decision has already been made, for example, which undermines the efficacy of the collaboration.

b. **Inadequate Stakeholder Representation.** Lead agencies often do not involve all government agencies and/or non-governmental interests that have a stake in the outcome of the collaborative process. There is a lack of awareness and practical guidance for determining the major stakeholders who need to be represented in a collaborative process.

c. **Lack of Resources.** Agencies have limited financial and personnel resources to undertake and organize a multi-stakeholder collaboration. Similarly, the lack of financial and personnel resources may limit some stakeholder groups from effectively participating in multi-stakeholder collaboration.

d. **Involving Nationally Oriented Groups in Locally Oriented Processes.** Where locally oriented, federally organized multi-stakeholder collaborative processes include issues that are of a broader national interest, it is difficult to involve national groups directly in the collaborative process.

2. Problems That Arise During Collaborative Processes

a. **Roles and Responsibilities of Agency Representatives.** Lack of clarity regarding the decisionmaking roles, responsibilities, and authority of agency representatives who are "at the table" in relation to those who are at "higher" levels. This is especially problematic in locally oriented processes that require decisions to be made at the regional and/or national levels.

b. **Maintaining Balanced Stakeholder Representation.** It can be difficult to

maintain balanced involvement of all major stakeholder interests throughout the course of the collaborative process. There is a need for guidance on how to handle instances where stakeholder representatives participate in a collaborative process until they feel their interests are not being fully satisfied and then pullout and resort to traditional adversarial strategies.

c. **Length of Time Needed to Complete Multi-Stakeholder Collaboration.** The time it takes to complete multi-stakeholder collaborative processes, especially consensus-based processes.

d. **Goal Confusion.** In some cases, the process of collaboration itself may develop into the primary goal of the participants rather than focusing on improved and informed decisions and designing a process that will effectively achieve this end.

3. Problems That Arise When Agency Decisions Are Made

a. **Unrealistic Stakeholder Expectations.** Nongovernmental stakeholders can be disappointed if the decision making framework is not specified. When non-governmental stakeholders participate in collaborative processes or assisted negotiations, sometimes the decision rules within the group are not clarified at the outset and the legal duties and obligations of the agency representatives for specific decisions or actions are not fully understood.

b. **Inconsistent Decisions.** Sometimes agency decision makers choose courses of action different from those arrived at by consensus in a collaborative process or by assisted negotiation in a conflict resolution process. The value of such participatory processes can be undermined. Guidance is needed to minimize this occurrence by assuring consistent communication within agencies during their participation.

c. **Implementation Challenges.** Recommendations from collaborative processes or conflict resolution processes may not always take into account their feasibility or resource requirements. Institutional structures may not exist or be limited to assure appropriate follow-through and monitoring to ensure implementation. Mechanisms for assuring the practicality of implementation requirements should be developed.

4. Problems Associated With Privately Organized Collaborative Processes

In addition to the cross-cutting issues raised in the sections above, there are some specific concerns reported regarding privately organized multi-stakeholder collaborations. Some

examples of issues that may need to be addressed include:

- What should agency personnel do when the process explicitly excludes certain stakeholder interests?
- How should they respond when there is clear evidence of an attempt to include representation of all stakeholder interests but not everyone chooses to participate?
- What should the agency do when the process includes a balanced representation of the diverse stakeholders that have an interest in the issues being discussed?
- Should federal agency staff participate in such processes if they are requested to do so and, if so, to what degree?
- Should the results of privately convened collaborative processes be given special weight or consideration by agencies and, if so, how and under what conditions?

III. The Potential Value of Pilot Projects

The results of the interviews and the preliminary review of the literature indicate there is some dissatisfaction with how agencies are implementing NEPA. These concerns are reflected in the list of reported problems outlined above. At the same time, many of the concerns that are attributed to NEPA implementation reflect broader concerns about the role of the federal government in public lands and natural resource management issues and with environmental decision-making in general.

Notwithstanding Congress' declaration more than 30 years ago of a national environmental policy in Section 101 of NEPA, it is clear the value conflicts that underlie environmental issues remain pronounced. Collaborative problem solving, consensus building, and dispute resolution processes have been used to address these value conflicts in a variety of situations since the mid-1970s. While these processes have been utilized in increasingly sophisticated ways and in a wide variety of circumstances by virtually every federal agency, as is evident from the problem statements outlined above, there is still much that can be learned about how to more effectively utilize these processes.

Undertaking a carefully designed pilot projects program will permit the U.S. Institute and those who have an interest in improving the quality of federal agency NEPA analyses and decision-making processes on public lands and natural resource management issues to:

- Clearly distinguish problems and concerns related to NEPA and the manner in which NEPA is being

implemented from concerns about other environmental statutes and/or broader societal concerns;

- Demonstrate innovative and practical solutions to clearly delineated NEPA implementation problems; and
- Learn more about the conditions under which collaborative problem solving, consensus-building, and dispute resolution processes can improve implementation of NEPA.

There are differing views regarding the effectiveness of NEPA implementation, reflecting legitimate underlying differences in values and perspectives about the nature and extent of the environmental impacts of proposed projects and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Collaborative processes and conflict resolution strategies often involve or implicate NEPA review and analysis activities. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

As indicated by the interviews and preliminary review of the literature, pilot projects could yield important insights into possible improvements in NEPA implementation and guidance with respect to:

- CEQ regulations and implementing NEPA;
- Federal agency regulations;
- Tribal, state, and local government guidance; and
- NGO guidelines and practices for participating in NEPA implementation.

IV. Designing a Pilot Projects Initiative

A. Challenges

The design and implementation of a pilot projects initiative raises a number of challenges, including how to best:

- Ensure that all interests will be fairly represented in the selection, evaluation, and analysis of such projects,
- Identify and respond to potential institutional barriers,
- Address concerns on the one hand that this initiative might lead to unanticipated changes in NEPA implementation, and on the other, that reform of NEPA implementation may not be forthcoming, and
- Manage the projects with appropriate public oversight.

To address these challenges, the U.S. Institute recommends establishing some

fundamental conditions for undertaking a pilot projects initiative, identifying a set of criteria for selecting the pilot projects, and establishing a separate set of criteria for evaluating the results of the pilot projects.

B. Basic Features of a Pilot Projects Initiative

The U.S. Institute recommends four basic features for a pilot projects initiative. First, there must be a sufficient number of pilot projects from which to draw reliable lessons across the four different types of collaborative processes (i.e., interagency, intergovernmental, governmentally organized, and privately organized) and across a spectrum of agencies that have responsibility for federal lands and natural resource management issues.

Second, it is important not to “reinvent the wheel.” The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. For this reason, the pilot projects under this initiative should be oriented less toward introducing a new concept or approach and more toward solving specific problems regarding the use of collaboration and dispute resolution in NEPA implementation. At the same time, the initiative would include research and a retrospective analysis of past and present NEPA projects involving collaborative and dispute resolution processes, in parallel with current projects in the pilot program, in order to broaden the information gained.

Third, pilot projects are not enough in and of themselves. Evaluation of the results of the pilot projects is essential in order to learn from both the successes and the failures. Articulating the criteria for assessing the outcomes of these pilot projects will be central to such an initiative. Dissemination of the results of the evaluations is essential to ensure that the lessons learned from these pilot projects are broadly understood and utilized.

Finally, a transparent, open, and public process is needed to build consensus regarding the desired outcomes of this pilot projects initiative in relation to NEPA implementation on federal lands and natural resource management issues. The interviews conducted thus far along with this request for public comment are a step toward laying the initial foundation for such a process.

C. Input Sought on How To Interpret the Suggestion of the Senators To Focus on Federal Lands and Natural Resource Management Issues

The U.S. Institute seeks input on how broadly or narrowly it should interpret the suggestion from the Senators to focus on “federal lands and natural resource management” issues. This question should be considered in light of the work to “streamline” NEPA implementation in several agencies such as the Federal Highway Administration as well as in specific situations such as the U.S.D.A. Forest Service’s and the Department of the Interior’s National Fire Plan. There are concerns that NEPA streamlining efforts should seek to retain NEPA’s effectiveness and at the same time improve its efficiency. Streamlining efforts will likely require a significant level of collaboration and dispute resolution planning to meet these ends. The need for effective collaboration, particularly interagency and intergovernmental collaboration, may be even more significant in instances where efforts are being made to streamline NEPA implementation.

The U.S. Institute would value input on how broadly this initiative should define its focus on federal lands and natural resource management issues. The strictest interpretation might limit the focus to NEPA reviews conducted by land management agencies such as the U.S.D.A. Forest Service, Bureau of Land Management, and National Park Service. Alternatively, a broader focus would include federal agencies whose mission includes, but not exclusively, the management of a natural resource, e.g., military reserves, or the mitigation of impacts on natural resources, e.g., transportation projects, airport expansions. It might also include opportunities to work with tribal governments with resource management issues impacting tribal lands and adjacent federal or state lands.

D. The U.S. Institute’s Role

The U.S. Institute proposes to serve as the lead agency for the purpose of administering the NEPA Pilot Projects Initiative consistent with its mission to assist with the implementation of the provisions of Section 101 of NEPA. This role would include:

- Providing program administration and oversight;
- Making the final decisions on the criteria for selecting the pilot projects;
- Selecting the pilot projects;
- Collaborating with participating agencies as necessary and appropriate to select and oversee neutral third party service providers such as conveners,

facilitators, fact-finders, trainers, mediators, etc.;

- Identifying the criteria by which to evaluate the outcome of the pilot projects;
- Selecting and overseeing the work of independent evaluators;
- Reporting on the lessons that are learned from a retrospective analysis and prospective pilot projects; and
- Establishing and managing a federal advisory committee that will be used to provide input on all of the above.

Several commenters strongly recommended the use of a federal advisory committee to help guide the U.S. Institute on these matters to assure transparency and build trust in the NEPA pilot projects initiative. The U.S. Institute proposes to form a federal advisory committee made up of a balanced but manageable number of individuals representing organizations that have an interest in the initiative.

E. Criteria for Selecting Pilot Projects

A preliminary list of the criteria the U.S. Institute proposes to use in selecting the pilot projects is as follows:

- Geographic balance (while it is expected that a majority of projects will be drawn from the Western U.S., an attempt should be made to select projects from the entire nation);
 - Diversity of agency participation from lead federal agencies, states, counties, and tribes;
 - Diversity of the federal lands and natural resource management issues to be addressed;
 - Balance of projects across the four different categories of collaboration (i.e., interagency, intergovernmental, governmentally organized multi-stakeholder, and privately organized multi-stakeholder) as well as projects that employ dispute resolution processes;
 - Projects of local, state, regional, and national scale representing the spectrum of issues that are the focus of the NEPA analysis and collaborative process;
 - Projects that are occurring at a variety of different stages in the NEPA review and decision-making process (where a range of collaborative and dispute resolution processes could or are occurring).
- In addition, the U.S. Institute is considering giving priority to pilot projects that:
- Are explicitly designed to address one or more of the NEPA implementation and/or collaborative process problems identified above;
 - Have a genuine potential for success (e.g., for collaborative processes, decisions have not been predetermined, adequate incentives exist for

collaboration or dispute resolution, etc.); and

- Emphasize innovative approaches to the integration of the substantive aspirations of Section 101 of NEPA with the implementing procedures of Section 102.

The U.S. Institute encourages comments on this list.

F. Evaluation and Reporting

In order to have value, the proposed NEPA pilots project initiative must include both an evaluation component and a reporting component. The evaluation component will include evaluations of the results and outcomes of the pilot projects by independent and professionally qualified evaluators. A concerted effort will be made with the guidance of the federal advisory committee to establish agreed upon criteria for assessing the efficacy and effectiveness of the pilot projects. At the conclusion of the initiative, the U.S. Institute will report on lessons learned, taking into consideration the findings of the independent evaluations and the retrospective analysis of the research, and make recommendations for changes, if any, that might be made to existing NEPA policies, guidelines or regulations.

As noted above, the U.S. Institute proposes to establish a federal advisory committee to advise the Institute on critical components of the NEPA pilot projects initiative, including the criteria for conducting evaluations of the pilot projects and how to best select and oversee the independent evaluators. The proposed role for the advisory committee includes the review and interpretation of the evaluation results and the identification of what it sees as key findings that the U.S. Institute should consider.

V. Conclusion

In order to explore the proposal for pilot projects more fully, the U.S. Institute is holding two public workshops which will be facilitated by the Meridian Institute. The workshops are scheduled for June 8, 2001 in Denver, Colorado and June 14, 2001 in Washington, DC Representatives of resource user groups, environmental organizations, academia, state, local, and tribal governments, and federal agencies are being invited in order to participate in a balanced and constructive discussion on this initiative. These participants will not act as a committee and there will not be any attempt to seek a group recommendation on any issue. Additional seats will be available for members of the public, who will be

given limited time on the agenda to provide comments.

If you would like to attend the workshop, please contact the Meridian Institute (see **ADDRESSES** section) by June 1, 2001 so that it can determine the amount of interest and prepare sufficient materials.

Based on the input provided at this workshop and any written comments received, as well as the information summarized in this document, the U.S. Institute will prepare formal recommendations to the Senators on a NEPA pilot projects initiative. Further development of such an initiative relies on the feedback of the public, interested stakeholders, and the Senators who requested the information.

Public Comments Solicited

The U.S. Institute will take into consideration any comments and additional information received on or prior to the close of the 45-day comment period.

Selected References

National Environmental Policy Act 42 U.S.C. 4321–4337.

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. 40 CFR 1500–1508 (1992).

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“Reclaiming NEPA’s Potential: Can Collaborative Processes Improve Environmental Decision Making?” March 1999. Workshop Proceedings. Co-sponsored by the Institute for Environment and Natural Resources at the University of Wyoming and the O’Connor Center for the Rocky Mountain West at the University of Montana.

Bingham, Gail and Lee M. Langstaff. “Alternative Dispute Resolution in the NEPA Process”. Resolve Center for Environmental and Public Policy Dispute Resolution. <http://www.resolve.org/Resources/pubs/default.htm>

Caldwell, Lynton H. 1998. “The National Environmental Policy Act. An Agenda for the Future.” Indiana University Press. 210 pp.

Miller, Anne Norton. 2000. “NEPA Where are we? Where are we going?” *Environmental Practice*. 2(4): 275–279.

Authority: 20 U.S.C. 5601–5609.

Dated: May 7, 2001.

Christopher L. Helms,
*Executive Director, Morris K. Udall
Foundation.*

[FR Doc. 01-11898 Filed 5-10-01; 8:45 am]

BILLING CODE 6820-FN-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 25, 2001. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule,

and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301) 713-7110. E-mail: records.mgt@nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1-462-01-2, 15 items, 12 temporary items). Working papers, including drafts and reference materials, relating to the preparation of plans and reports stemming from the Government Performance and Results Act. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of strategic plans, annual performance plans, and annual performance reports.

2. Department of Agriculture, Forest Service (N1-95-01-1, 3 items, 3 temporary items). Records relating to agency Y2K activities, including risk assessments, the testing and modification of automated systems, briefings, and training. Electronic copies of documents created using electronic mail and word processing are included.

3. Department of the Army, Army-wide (N1-AU-01-17, 1 item, 1 temporary item). Master file of the Central Issue Facility System, an electronic information system containing information concerning the receipt, storage, issue, exchange, and turn-in of clothing and equipment at installations.

4. Department of the Army, Agency-wide (N1-AU-00-39, 2 items, 2 temporary items). Master file and outputs of the Hazardous Substance Management System, an electronic information system used to support and facilitate the tracking and reporting of hazardous materials at installations. The system includes such data as quantities of hazardous chemicals and information concerning their location, handling, storage, disposal, release, and transfer. Copies of reports generated by this system that pertain to the release of hazardous material are sent to the Environmental Protection Agency (EPA) and incorporated into an EPA system that was previously approved for permanent retention.

5. Department of Defense, Defense Logistics Agency (N1-361-01-2, 1 item, 1 temporary item). The Safety and Health Information Reporting System, an electronic information system consisting of employee exposure records used to produce an occupational safety and health log and summary. Included are reports on hazards, accident investigations, and surveys and inspections. Records are proposed for retention for 30 years, as required by 29 CFR 1910.

Appendix G.

Meridian Institute's Report on Public Input and Consultation



Meridian Institute

Connecting People to Solve Problems

**Report on the Results of the Input and Consultation Phase of the
National Environmental Policy Act Pilot Projects Initiative**

**Prepared by Meridian Institute for the
United States Institute for Environmental Conflict Resolution**

July 12, 2001

Executive Summary

This report describes the activities that were conducted by the U.S. Institute for Environmental Conflict Resolution (the Institute) and the Meridian Institute, acting under contract with the U.S. Institute, during the input and consultation phase of National Environmental Policy Act (NEPA) Pilot Projects Initiative. These activities included:

- stakeholder briefings, interviews, and a literature review;
- preparation of Federal Register Notice and Request for Comment;
- preparation for, and facilitation and summarization of public workshops conducted in Denver, Colorado and Washington, D.C.; and
- solicitation and analysis of written comments.

The report also contains the observations and reflections of the Meridian Institute on the results of the input and consultation phase focusing on:

- Broad and Diverse Support for Proceeding with the Initiative;
- Substantive and Geographic Scope of the Initiative;
- Interrelated Questions about Whether “Pilot” Projects is the Correct Approach and What Will Be the Resource Implications for Conducting a Pilot Projects Initiative;
- The Critical Importance of Evaluation in General and the Need for Retrospective Case Study Analyses as well as Prospective Evaluations of Pilot Projects;
- The Critical Importance of Conducting Baseline Studies on a Variety of Matters;
- Widespread Stakeholder Support on “Revitalizing” Section 101;
- Link with Information Technology and Adaptive Management; and
- Need for an Open and Transparent Process.

Background

U.S. Senators Craig Thomas, Max Baucus, Mike Crapo, and Harry Reid asked the U.S. Institute for Environmental Conflict Resolution (the Institute) to explore the use of pilot projects to learn more about how to improve the implementation of the National Environmental Policy Act (NEPA) through increased collaboration, consensus building, and appropriate dispute resolution processes. This request grew out of the efforts of the University of Wyoming's Institute for Environment and Natural Resources (IENR) and the University of Montana's Center for the Rocky Mountain West (CRMW), which had held a conference on "Reclaiming NEPA's Potential" in March 1999.

The Institute responded to the Senators' request by seeking input from a wide array of stakeholders on a number of questions about how the Institute should proceed with what came to be referred to as the "NEPA Pilot Projects Initiative" (the Initiative). The U.S. Institute contracted with Meridian Institute to assist this effort, which included one-on-one conversations and interviews, briefings and meetings with small groups, two national public workshops, and the solicitation of written comments through the Federal Register.

Description of Input and Consultation Phase Activities

Initial Briefings, Interviews, and Literature Review

One of the first steps in the effort to gather input from stakeholders was a briefing that was held with 14 staff of the members of the Senate Environment and Public Works (EPW) Committee on February 1, 2001. This meeting provided an opportunity for both committee and personal staff of the members of the Senate EPW Committee to learn more about the U.S. Institute, the nature and origin of the request to the Institute, the approach the Institute intended to take to gather input from interested stakeholders in an effort to determine how to best respond to the request from the four Senators, all of whom were members of the Senate EPW Committee at the time they signed the letter to the Institute. It also was an opportunity for Congressional staff to provide input themselves on the approach the Institute should take with the Initiative.

Subsequent to this briefing, approximately 70 stakeholders were interviewed and consulted with. Input was sought from individuals representing a balanced and broad diversity of perspectives, as measured by stakeholder interest, expertise and experience with NEPA and collaborative process. The following categories represent the targeted perspectives:

- Local/Regional Citizen Groups
- National Environmental Organizations
- Recreation-based Resource Users
- Commodity-based Resource Users (national, regional, and local)
- Local Government
- State Government
- Federal Government
- Tribes
- NEPA Experts
- Environmental Conflict Resolution (ECR) Practitioners

The purpose of these conversations was to learn more about 1) what specific concerns or issues should be addressed by pilot projects, 2) what parameters should define the Pilot Projects Initiative, 3) what criteria should be used to select pilot projects, 4) what institutional mechanisms would be needed to assure project oversight, implementation, and evaluation, and 5) how to maximize the likelihood that positive lessons learned from the pilots can be mainstreamed and begin to influence the implementation of NEPA in the future. Appendix E of the U.S. Institute's Report and Recommendations on a NEPA Pilot Projects Initiative includes a list of the people who were interviewed or consulted with.

Another key event that took place on April 27, 2001 was a briefing for the federal agency "NEPA Liaisons" that was organized by the Council on Environmental Quality (CEQ). This event was attended by approximately 30 staff from numerous federal agencies. Additional briefings were conducted by the Institute with the Federal Environmental Conflict Resolution (ECR) Roundtable, approximately 60 of the Department of Energy's NEPA Compliance Officers, and 15 persons from the Arizona Common Ground Roundtable. These events provided the participants with an opportunity to learn more about the U.S. Institute, the nature and origin of the request to the Institute, and the approach the Institute intended to take with the Initiative. Participants in these briefings also had an opportunity provide input to the Institute's preliminary thinking about how to respond to the request from the Senators.

In addition to these interactions, a focused effort was made to review currently available literature and written resources, including but not limited to the aforementioned March 1999 NEPA Workshop proceedings and the January 1997 CEQ NEPA Effectiveness Study.

Federal Register Notice

The results of the interviews, small group meetings, and preliminary literature review were used as the basis for developing a Federal Register Notice (FRN), which was published on May 11, 2001. A number of perceived problems with both NEPA implementation and collaborative processes were summarized in the FRN using three broad categories of problem areas including: 1) problems associated with NEPA implementation; 2) problems associated with but not limited to NEPA implementation; and 3) problems associated with collaborative processes and dispute resolution. The FRN also included the preliminary thinking of the U.S. Institute on its proposed approach to the NEPA Pilot Projects Initiative and invited public comment through written responses and/or participation in one of two public workshops. (See Appendix F of the U.S. Institute's Report and Recommendations on a NEPA Pilot Projects Initiative for the full text of the May 11, 2001 FRN.)

Public Workshops

In order to provide an opportunity for public discussion and dialogue on the preliminary findings and approach to the Initiative described in the FRN, the Institute held two public workshops; one on June 8, 2001 at the Embassy Suites DIA in Denver, Colorado and one on June 14, 2001 at the GSA National Capital Regional Training Center in Washington, D.C.

The objective of the workshops was to maximize discussion and dialogue on the preliminary findings and proposed approach. Again, diverse perspectives representing resource user groups,

environmental organizations, academia, state, local, and tribal governments, and federal agencies were targeted. The workshops did not attempt to establish consensus among attendees.

There were 21 people who attended the Denver meeting as participants and 18 observers were in attendance. At the Washington, D.C. meeting, 27 people attended as participants and 38 observers were in attendance. Extensive discussion and input was received during both workshops. Attachment 1 of this report contains the summaries of these workshops, a list of the attendees, the agenda, and the overhead slides that were presented at these workshops. The summaries were distributed to all attendees who were then afforded an opportunity to submit additional written comments on the content of the summaries before they were made publicly available as a part of this final report.

Written Comments

The Institute requested written comments on its preliminary findings and proposed approach regarding the NEPA Pilot Projects Initiative that was published in the Federal Register on May 11, 2001. A total of 28 written comments were received during the 45-day comment period. Comments were received from state and federal agencies, tribal interests, academicians, private practitioners of alternative dispute resolution, and local collaborative research groups.

All of the written comments expressed support for the Initiative, stressing its potential value to agencies and the public. The overarching themes of the written comments fell into four categories:

- NEPA implementation;
- NEPA Section 101;
- Collaboration and the collaboration-decision-making nexus; and
- Project design recommendations including selection criteria, outcomes/evaluation, and FACA.

Attachment 2, which was prepared by the staff of the U.S. Institute, contains a summary of these written comments. (If you are interested in receiving copies of written comments, please contact the U.S. Institute at 520-670-5299.)

Meridian Institute’s Observations and Reflections

The Meridian Institute conducted many of the interviews described above, participated in key briefings with congressional and federal agency staff, helped to organize, served as facilitator, and prepared summaries of the two public workshops, and had an opportunity to review all written comments as well as the summary of those comments that was prepared by the staff of the U.S. Institute. Due to Meridian’s extensive involvement in these activities, the U.S. Institute requested Meridian to summarize our observations and reflections on the input the U.S. Institute has received on the NEPA Pilot Projects Initiative. We wish to note that the observations and reflections set forth below are the result of conversations and debriefings with U.S. Institute staff, with whom we share broad agreement with the direction this Initiative should take. These observations and reflections are not intended to supercede the very useful and high quality input that was provided by a large number of individuals representing a broad diversity of stakeholder interests. We believe this input has been thoroughly documented and summarized in the attached documents and we urge interested readers to carefully review these materials.

1. Broad and Diverse Support for Proceeding with the Initiative – Our first observation is there is broad support from a wide diversity of stakeholders for proceeding with the Initiative. Many stakeholders expressed such support without any reservations. While others initially expressed some concerns about whether there might be a “hidden agenda” behind the request that lead to the Initiative (i.e., to short circuit or “gut” NEPA). These concerns seemed to dissipate once these stakeholders learned more about the U.S. Institute and its intentions. Notwithstanding the basically positive response to this concern that became evident over the course of the input and consultation phase, the initial expression of this concern emphasized the need for the U.S. Institute to continue to seek balanced input and to consult with key stakeholder groups during the implementation of and throughout the life of the NEPA Pilot Projects Initiative.
2. Substantive and Geographic Scope of the Initiative – Our second observation is the U.S. Institute will need to make it clear what will be the substantive and geographic scope of the Initiative. The request from the Senators refers to pilot projects focused on the use of collaborative processes to improve implementation of NEPA on federal lands and natural resource issues. A variety of suggestions were made for the Institute to interpret this request broadly or narrowly, or in a manner that would give a greater or lesser degree of emphasis to one feature versus another (e.g., to de-emphasize the connection to NEPA and strengthen the connection to public lands). We would suggest that the stakeholder input received by the Institute justifies staying focused on the request from the Senators for pilot projects that use collaborative processes to improve implementation of NEPA on federal lands and natural resource issues. We note that this scope is already sufficiently broad to encompass a wide range of possibilities. With regard to question of geographic scope, we note that there was widespread support for the Institute to make it clear that the Initiative would not be limited to federal lands and natural resource management issues in the western United States, but rather would be truly national in its scope.

3. Interrelated Questions about Whether “Pilot” Projects is the Correct Approach and What Will Be the Resource Implications for Conducting a Pilot Projects Initiative – A number of stakeholders have questioned whether the focus on *pilot* projects is really what is needed, in so far as there have been numerous examples of the use of collaboration in NEPA processes on federal lands and natural resource issues. These stakeholders believe there is not some completely new and untested ground that needs to be tested. These stakeholders tended to emphasize the relative importance of establishing a common framework for evaluating the quality and results of collaborative NEPA processes rather than using the notion of *pilot* projects as a means to encourage the use of collaborative processes. Other stakeholders indicated they believe the notion of conducting *pilot* projects is appropriate because more encouragement to conduct collaborative processes is still needed. In addition, there is still much that can be learned regarding the use of collaborative processes, both in general as well as in the context of NEPA implementation and federal lands and natural resource management issues.

A related set of concerns revolves around the strong view of most, if not all stakeholders that the NEPA Pilot Projects Initiative should *not* take away from what many believe are an already limited amount of funds being devoted to NEPA implementation by Congress and many agencies. Stakeholders also expressed concerns that to the extent that the cost of pilot projects are higher than whatever might be considered the “standard” approach to NEPA implementation, such higher cost efforts might not be sustainable over the long-term without increased funding over the long-term.

Meridian believes these are legitimate concerns that relate to the broader question of how to best bring collaborative processes into the “mainstream” of public policy decision-making. We believe these concerns should be carefully addressed in the design and implementation of the NEPA Pilot Projects Initiative. However, we believe the value of conducting *pilot* projects as a key component of a larger set of activities is still warranted. It is important to communicate that new and innovative approaches are needed and there is indeed much that still needs to be learned. Perhaps more importantly, the lessons learned regarding the use of collaborative processes in the context of NEPA implementation on federal lands and natural resource management issues need to be more widely shared and disseminated.

4. The Critical Importance of Evaluation in General and the Need for Retrospective Case Study Analyses as well as Prospective Evaluations of Pilot Projects – Building on the last point, Meridian believes that perhaps the single most important contribution that can be made as a result of the energy and focus that has been brought to bear on the proposed NEPA Pilot Projects Initiative is the possibility that it will produce a common evaluation framework that can be applied simultaneously to a set of case studies in a retrospective manner and to a set of pilot projects that take place in the future. There was widespread support for this notion of conducting both retrospective as well as prospective evaluations. Meridian would suggest that the Institute take this a step further and use the Initiative as a platform to develop and encourage the use of a common evaluation framework for a wide variety of collaborative processes. We further note that the completion of retrospective case studies may help to

yield important insights and lessons without having to wait for the completion and evaluation of pilot projects.

5. The Critical Importance of Conducting Baseline Studies on a Variety of Matters – Another observation is that there are several subjects for which it would be very useful for the Institute to conduct some “baseline” studies. These topics include but may not be limited to:

- Time and costs associated with NEPA processes in natural resource agencies, including whether and, if so, what type of collaborative process was utilized, and whether there was litigation and, if so, what was the basis and outcome of the litigation;
- An inventory of approaches to “best practices” to collaboration, consensus-building, and conflict resolution, including any “best practice” documents that exist for stakeholder participation in and agency sponsorship of such processes;
- An inventory of approaches to evaluating the quality and outcomes of collaborative processes;
- In depth case studies of collaborative NEPA processes on federal lands and natural resource management issues; and
- An analysis of agency experience and/or guidance associated with implementing Section 101 and 40 CFR 1502.2(d), including the development of case studies if there are examples where agencies have attempted to use the national policies embedded in Section 101 not only as a set of principles to guide agency decision-making, but as a set of principles that can help to guide a collaborative NEPA process as well.

Such “baseline” studies could be used to address what some stakeholders believe are misconceptions and myths with regard to NEPA implementation and, at the same time, allay some fears about the underlying purpose of the Initiative. They can also be used as the basis for focusing the pilot projects and building a body of work that can achieve the overarching objective of improving NEPA implementation on federal lands and natural resource issues through the use of high quality collaborative processes.

6. Widespread Stakeholder Support on “Revitalizing” Section 101 – There was widespread support from a broad diversity of stakeholders to use the NEPA Pilot Projects Initiative as an opportunity to “revitalize” Section 101 of NEPA. Given the fact that the enabling legislation for the U.S. Institute makes explicit reference to Section 101 of NEPA, Meridian believes the Institute should take full advantage of this high level of interest in “revitalizing” Section 101. Specifically, in addition to the baseline study noted above, Meridian recommends that the criteria for selecting pilot projects encourage the use of Section 101 as a set of principles that can help to guide the collaborative process. In addition, Meridian suggests that the U.S. Institute seriously consider including, as part of the NEPA Pilot Projects Initiative, a series of events in different locations across the country aimed at fostering a national dialogue on the importance of the national policies contained in Section 101 and how these very eloquently articulated principles can be brought to life over thirty-two years after Congress passed NEPA.

7. Link with Information Technology and Adaptive Management – A number of stakeholders expressed a desire to use the NEPA Pilot Projects Initiative as an opportunity to make greater use of existing information management technologies (especially Geographic Information Systems (GIS), Decision-Support Systems (DSS), and visualization technologies) in combination with the concept of adaptive management, along with the focus on collaborative approaches to problem solving and conflict resolution. Meridian agrees that the “social technologies” of collaboration and dispute resolution, along with current information management technologies and the conceptual framework of adaptive management is potentially a very powerful combination that is ripe for some focused attention.

8. Need for an Open and Transparent Process – We conclude with the comment that we believe for the NEPA Pilot Projects Initiative to succeed it will be critically important that the U.S. Institute maintain the high degree of openness and transparency it has already achieved in the activities that have been conducted to date. Specifically, we believe the use of a federal advisory committee will provide a useful avenue for the U.S. Institute to receive advice from a group of knowledgeable and carefully balanced stakeholders on a number of critically important issues over the life of the Initiative. We caution the Institute to consider how to best design and structure the possible use of an advisory committee in combination with other means of obtaining public input so as to avoid over reliance on the possible use of an advisory committee. And, finally, given the potential length of time the NEPA Pilot Projects Initiative may require for pilot projects to be selected, conducted and evaluated, Meridian suggests the Institute consider some creative ways to address consistency of participation and retention of the members of the potential advisory committee.

Attachment 1

NEPA Pilot Projects Initiative Workshop Summary Materials

- **Summary of Denver, Colorado Workshop**
- **Summary of Washington, District of Columbia Workshop**

WORKSHOP SUMMARY

NEPA Pilot Projects Initiative Public Workshop
U.S. Institute for Environmental Conflict Resolution
Embassy Suites, Denver International Airport
Denver, Colorado
June 8, 2001

WELCOME, INTRODUCTIONS, AND OPENING REMARKS

Dr. Emerson, Director of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), opened the workshop with a welcome to all participants and brief opening remarks. She introduced Tim Mealey, Senior Partner at Meridian Institute and facilitator for the meeting, and asked everyone present to introduce him or herself. The meeting attendees included 21 participants and 18 observers (See Attachment A).

Following introductions, Dr. Emerson provided a brief introduction to the U.S. Institute and an overview of the NEPA Pilot Projects Initiative. (The presentation slides are included as Attachment B.) U.S. Senators Craig Thomas, Max Baucus, Mike Crapo, and Harry Reid asked the U.S. Institute to explore the use of pilot projects to learn more about how to improve the implementation of the National Environmental Policy Act (NEPA) through increased collaboration, consensus building, and appropriate dispute resolution processes. Dr. Emerson explained that this request grew out of the efforts of the University of Wyoming's Institute for Environment and Natural Resources (IENR) and the University of Montana's Center for the Rocky Mountain West (CRMW), which had held a conference on "Reclaiming NEPA's Potential in March 1999.

The U.S. Institute responded to the Senators' request by drawing from the expertise of NEPA experts, ADR practitioners and interested stakeholders. Dr. Emerson explained that the focus of the initiative is not on NEPA the act itself, but on the implementation of NEPA. Further, she described how the U.S. Institute contracted with Meridian Institute to assist with the assessment and the initial phases of the initiative. Input for the assessment was sought from individuals representing diverse perspectives, including environmental organizations; resource users; federal, tribal, state and local governments; and participants in collaborative processes. The results of the assessment phase of the project were used as the basis for the Federal Register Notice (FRN), published May 11, 2001. The FRN invited public comment through written responses and/or participation in one of two public workshops. The purpose of the workshop is to provide an opportunity for discussion, comment and dialog on the preliminary findings and approach to the initiative described in the FRN. She emphasized that the objective of the workshop was not to establish consensus but to maximize discussion and dialogue on the preliminary findings and approach.

AGENDA REVIEW AND OPPORTUNITY FOR INITIAL Q&A

Tim Mealey reviewed the Agenda with the group (See attachment C). He explained that a balanced and diverse group of participants had been invited to participate and that observers would also be invited to comment at select times in the agenda. Mr. Mealey suggested some basic ground rules and highlighted the fact that the workshop would be documented without attributing comments to meeting attendees. He explained that a summary of the workshop would be circulated to everyone in the room and attendees would be given the opportunity to submit written comments in response to the summary.

Mr. Mealey invited comments from the meeting participants on the objectives and agenda for the workshop. The following reflects the comments from participants. (Questions from the participants are shown in italics with responses following.)

What happens at the end of the workshops and public comment period? Say you do a pilot and find some opportunities for improvement, then what? Does CEQ get involved? Who is the audience? Dr. Emerson explained that the initiative is a way to draw attention from around the country to this important issue and to create an opportunity to explore how to improve NEPA implementation through the use of collaborative processes. She indicated that Congress is interested in what we learn. She reiterated that the U.S. Institute has not assumed that this initiative will lead to changes in the act itself. However, it could lead to recommendations to certain agencies, suggested changes in CEQ or agency regulations, best practices, recommendations or agreements among various governments, etc. The U.S. Institute must seek approval from the Office of Management and Budget (OMB) before any budgetary implications of this initiative can be advanced.

Additional participant comments focused on using this initiative as an opportunity to establish a process for more uniform implementation of NEPA and the need to address the costly and time-consuming impact of litigation on NEPA implementation. Dr. Emerson responded by saying that there is no question that litigation is a concern and that collaboration and conflict resolution techniques may be able to help limit litigation and help improve decisions. However, she (and other participants) emphasized the fact that collaboration was not appropriate in all cases and that litigation can be an appropriate means to resolve a dispute. Therefore, the initiative should not promote collaboration just for collaboration sake.

Did any particular project inspire the Senators to initiate this idea? What was the impetus? Everyone may have their own specific project of interest but there was not any particular project or projects that inspired the Senators to take action. It was noted by one participant that the Senators are all from western states.

It may be important to explain Section 101 so that people really understand its meaning and implications. Dr. Emerson referred to a section in the summary from the 1999 NEPA Conference held in Florissant, CO (Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision-making?) that helps to explain the significance of Section 101. Copies of the proceedings from that conference were made available to all attendees.

Why are we using the term pilot? The term pilot indicates that you haven't done it before. In this case there has been significant effort along these lines. It was a term that came from the 1999 conference and was intended to connote a degree of experimentation. However, the Institute will take that into consideration.

SUMMARY OF INTERVIEW RESULTS

Mr. Mealey summarized the results of the interviews and preliminary review of the literature. The presentation slides, which summarized the preliminary findings published in the 5/11/01 FRN, are included in Attachment B. He explained that the list of issues and concerns was not intended to be definitive or exhaustive and that the goal was to stimulate discussion and attempt to identify additional factors or clarify issues that have already been identified.

Discussion of Problems and Concerns About NEPA

Following Mr. Mealey's presentation, the participants were given the opportunity to clarify, comment on and add to the ideas presented with the understanding that the problem statements presented could serve as a focal point for the NEPA Pilot Projects Initiative. The focus of the discussion was on:

- Reactions to the results of the interviews and research,
- Identification of additional problems associated with NEPA implementation and the use of collaboration to implement NEPA, and
- Clarification of how the problem statements could be used to guide the selection of pilots.

[EXPLANATORY NOTE: At various points in the meeting, the discussion was limited to invited participants in order to efficiently manage the discussion and ensure a balance of perspectives reflected in the record. Observers were given an opportunity to comment at select times in the agenda. In this summary, participant and observer comments are summarized below in a non-attributional manner and organized according to several themes that emerged throughout the day without distinction as to whether the comment was made by a participant or an observer. There is no particular significance to the order in which the comments are presented. Each bullet represents a synthesis of an individual's comments.]

General Comments on NEPA Implementation

- Many NEPA processes are done as Environmental Assessments (EA's) and end up as Finding Of No Significant Impact's (FONSI's) – which significantly limit the consideration of alternatives and public involvement. Our group found that only a third of the federal agencies require public involvement under an EA. We would like to formalize and institutionalize the integration of public comment under EA's.
- What happens after a ROD is issued? According to most perspectives, NEPA is complete once the ROD is completed. A lot of agencies think that and thus there is not a lot of follow through. That may be related to funding or lack thereof.
- Different agencies have different views of the role of NEPA documents (participation and timing) as part of the decision-making process.
- I'd like to see this document emphasize the funding issues because I think that is very significant. The public depends on the good will of agencies and neighbors but we can't rely on something to be done when there is no funding.
- Interagency coordination issue: sometimes stakeholders (agencies) will not or cannot be involved up front and when new stakeholders come in near the end of a process they can cause controversy. They may not have the resources to participate throughout. (Funding)
- My experience is that Section 7 of the Endangered Species Act is one of the most related laws and often times I think that NEPA takes abuse when people are really upset with Section 7.
- I don't think you can divorce NEPA from the other statutes. My frustrations are mostly with other statutes not with NEPA. It is also frustration with the agencies implementing NEPA. NEPA is an umbrella process – when doing NEPA you are really doing all the other processes.
- NEPA implementation now emphasizes documentation over quality planning and decision-making. We are doing a better job of document preparation in an attempt to survive lawsuits.

General Comments on Collaborative Processes and NEPA

- There seems to be an underlying assumption by NEPA critics that Alternative Dispute Resolution (ADR) and collaborative process are *the* means of fixing problems with NEPA.

- One of the problems with collaboration in NEPA is that NEPA is focused on making the most scientifically sound and best decision. Whereas, the collaborative process is to make a decision that everyone agrees with. Those two are sometimes in conflict.
- The success or failure of collaborative projects may be dependant on the attitude and behaviors of the people at the table.
- One of the key questions is, “Collaborate on what?” And “What should we *not* collaborate on?”
- Regarding problems associated with privately organized collaborative processes – as I become more involved in place-based collaborative processes, one of the things I like about the process that BLM is using is that they have devised a decision-making process that requires consensus among the plenary group and in sub-groups they allow for majority rule. This helps to prevent roadblocks in cases where there is not consensus.
- Local and other governments need to be integrated as cooperating agencies.
- There seems to be a false assumption that, if there is something wrong with NEPA, then collaboration is the way to way to fix it. I don’t agree with that. There is a time and place for various processes – even litigation. I would only advise a client to get involved in ADR if it will be quicker and less time consuming, etc.
- I am not going to give up my option to litigate in order to participate in a collaborative process.
- It takes a lot more time and effort to participate in collaborative process than to litigate.

Inadequate Integration of Section 101 and the Balance Between 101 and 102

- Many NEPA processes do not address the policies set forth in Section 101, particularly the degree to which future generations are taken into consideration in the decision-making vs. carving up the pie for current use.
- It isn’t just about the environmental factors it is about the *integration* of the environmental factors with other priorities, social values and policy priorities. That is the essence of the need to look at future generations.
- Frustration that the lofty goals of Section 101 appeared to be ignored by many during the NEPA documentation process. My group has determined that using more collaborative process was a way of engaging the goals of Section 101. Many people believe that those goals have been ignored and the collaborative process is a way of integrating them. There needs to be a better mechanism for having a discussion.
- Part 1502 .2d of the implementing regulations requires that Section 101 be followed, but no one does that. When reviewing documents, I am looking for things that will trigger a lawsuit and compliance with Section 101 is not one of them.
- No agency has ever been sued for not complying with implementation of Section 101 (subsequently argued).
- The difference needs to be maintained between Section 102 and the rest of NEPA. As it is done right now, as long as the process is done properly, we can choose the least environmentally friendly alternative as long as it is done correctly.
- There is nothing that mandates that the agencies make decisions consistent with Section 101.
- Section 101 is supposed to be integrated into all agency decisions – not just Environmental Impact Statements (EIS’s).
- The attraction of litigation is that you can achieve breakthroughs – it changes the path so that you no longer can linger on the same path. When I hear “balanced decision-making” and “balanced representation” then I translate that to mean that everything is going to stay the same because that is what many people are most comfortable with. To what degree does collaboration allow for major breakthroughs? Can Section 101 help move a collaborative effort from the status quo to a breakthrough – shifting away from the mentality of stakeholders needing to be at the table to make sure that nothing significant happens?
- It is the spirit of Section 101 that is significant. How do we implement the spirit of the law?

- Sections 101 and 102 need to be separated, and we need to make sure that they stay separate.

The Integration of Stakeholder Perspectives into the Decision-Making Process

- Adequate stakeholder representation and the desire to keep balance sounds well and good but sometimes that is just a head count and a way of checking the box. Balanced decision-making and balanced representation are not one in the same. Sometimes a good facilitator can address the disconnect, but it has to be incorporated into the process or you will end up in lawsuits.
- My group wants to emphasize the importance of cooperating status for local governments.
- You need to look carefully at the group dynamic. Who has the power? Who is influencing the decisions?
- From the perception of some stakeholders – there is an appearance of a preordained decision in the NEPA processes. The data collection, etc. is just to justify a decision that has already been made.
- If you are involved in a collaborative process, that is good; but in the end, it is the guy in the “gorilla suit” (i.e., the agency policy maker) that is going to decide the result regardless of how many industry folks or conservation folks are in the room.
- It is important to recognize the “gorillas” that are not at the table and recognize that the scientists and regulators are also influenced by bias and perceptions – they don’t always participate in NEPA processes. Collaboration is not as effective when the gorillas are not really there.
- The locally driven/place based perspectives need to take into consideration that they don’t get an extra vote because they live there.

Concerns Associated with Federal Advisory Committee Act (FACA)

- Perception of FACA - inconsistent interpretation of FACA and/or abuse of FACA limits public input.
- A more consistent approach needs to be developed for FACA. Examples cited indicate a very inconsistent interpretation of FACA; and if you can help NEPA, then it may be in that way.

Tribal Participation in NEPA Implementation

- The involvement of tribes needs to be increased in NEPA processes. In the case of NEPA, the federal agencies are making the decisions about tribal lands without involving tribal governments.
- There are a lot of tribal regulations; federal agencies commonly overlook them. They only consider federal regulations. As a result, tribes see the documents after the fact and find that they have not met our requirements. Often agencies are using EA’s or FONSI’s in these cases.
- It is not just the timing; it is the nature of the intergovernmental collaboration with tribes given sovereignty.

Agency Participation in Collaborative Processes

- Regarding the intergovernmental coordination and inappropriate timing (of such coordination), I don’t think it is a problem when everyone is included in the process. My group has found that, in the case of the stakeholders that we were not successful in engaging initially, we now have to go back and bring their perspectives into the process.
- There are some disincentives to interagency collaboration. Agencies are protective of their funding and they don’t want to shift their (jurisdiction, data, etc.) to other agencies in order to collaborate.
- The private sector can encourage federal agencies to be more interactive.

- I don't think the agencies are going to be able to collaborate well with the public if they can't collaborate well with each other.
- Regarding the *timing* of intergovernmental collaboration: I think it is more than timing. It is also the nature of intergovernmental cooperation and that nature has historically undervalued the tribal perspectives.
- The significance of attitudes and beliefs does not exclude federal agencies. In fact, I think their attitudes are perhaps the most significant.

Comments on Planning and Decision-making

- One of NEPA's most fundamental problems is that it is predictive rather than evaluative – how do we learn from our past and bring that knowledge and data into the process.
- With NEPA, an array of alternatives are displayed and considered. That is not the way that most groups make decisions. The way that we as humans make decisions is not recognized in the NEPA procedures. The CEQ regulations and the way they define the process really needs to be looked at as the model that defines our process in the future.
- People are good at identifying: 1) what is the problem and 2) criteria for making a selection. Those factors are not what most agencies “give up” to public input. They are the key aspects of the decision-making process and are often left out.
- *How* the alternatives are identified is a key part of the process. As a private interest, I have had to put in huge amounts of time to generate and integrate additional alternatives to be considered in the cases where the alternatives to the preferred decision are not acceptable or reasonable. Of course, the Federal Advisory Committee Act has gotten in the way of that to some extent.
- You have to spend more time with the purpose of the project and need rather than go straight to the generation of alternatives – that is where your time should be spent.
- Regarding EA's vs. EIS's – in California, EA's are more common, but they do not have the same requirements for public involvement as EIS's. The disincentive for doing EIS's is that they are going to be a multi-year, multi-million dollar project, and we can't seem to get past these large time and dollar investments.
- It is so frustrating for people to think that they will have collaboration and consensus in the decision-making when in fact that is not going to happen. In the end, the agency is going to make the decisions. There is a need to distinguish between a collaborative process and collaborative decision-making.
- When you go into a collaborative process, have the agencies gotten to the point where land management decisions are integrated into NEPA when they belong elsewhere? NEPA should be more of an allocation process.
- If NEPA is going to work, I think we have to have a shared understanding of the resource base. We do not have a way to make that happen in NEPA right now. Adaptive management also requires that same kind of understanding. It implies that there is a shared understanding of the problem. That is not always the case. It becomes my expert verses your expert then ends up in court. *We* need to find a way to share the information base. Then actions will fall out of that common base. Otherwise, I don't see how you can make a decision.

Editorial Comments on and Clarifications of the Federal Register Notice

- The multi-stakeholder category is misleading – they are all multi-stakeholder so it could use a better title.
- Some privately organized processes do involve federal agencies in a variety of ways not just as observers/resource people.

- The slide dealing with “goal confusion” during the collaborative process does not explicitly address the cases where people participating understand but disagree on the goals. They never did or never will agree and still choose to participate. “Goal confusion” implies that there was agreement at the outset – often that is not the case.

PROPOSED APPROACH

After lunch, Dr. Emerson presented a summary of the proposed approach for the NEPA Pilot Projects Initiative to help stimulate discussion and receive feedback from the attendees about next steps. (The presentation slides are included in Attachment B.)

At one point in the conversation, questions were raised about the impetus and background of the proposed pilot projects. In response to questions raised about the motivation of the Senators’ request, the participants discussed the history of the idea for the initiative and participants who attended the 1999 NEPA Workshop explained that the origin of pilots was raised long before the Senators ever became involved. Additionally, participants explained that non-western Senators were also approached, but the significance of the four signatories is that they were all on the Environment and Public Works Committee of the Senate. Regarding whether the Senators’ letter is sincere, one participant suggested that it doesn’t matter. The initiative creates an opportunity and it is worth pursuing for that reason alone.

Discussion of Proposed Approach

Factors to Consider in the design of the Pilot Projects Initiative

- You do not know if the NEPA implementation problems are real or perceived. Resolving this question may not be possible through pilots; it may require more research.
- Federal lands and natural resource management has been the focus – but the initiative needs to take into consideration the fact that the implications could spill over into other decisions and impact other federal agencies.
- Consider a “safe harbor” or regulatory relief for the pilots. That would be an important factor that could significantly influence the future of the project and may require opinions from groups just like this and the Washington, DC meeting.
- Have you considered a means of “freeing people from the shackles” and interests that have limited innovative approaches? For example, waivers (via Congress) to create flexibility for these pilots to experiment.
- On the waiver issue – there is so much mush in the law that there shouldn’t really be any need to have a waiver. There is plenty of flexibility to do what you are proposing.
- What you do here has to sell with the current Administration. For the federal agencies, we will be responding to the priorities of the Administration – streamlining. You will need to sell that to OMB. How can you streamline without litigation?
- We need to focus the initiative so we don’t get the wrong answer. Is the key issue on the table right now collaboration?
- Look at funding agencies together to improve the process.
- The best case I was ever involved in was a case where there had to be a standard set– we knew what the goal was upfront.
- Regarding monitoring and/or recommending certain types of projects: scientific uncertainty is inherent in these projects. We make an educated guess – doing the best we can with what we know. Yet, regulations under NEPA don’t explicitly allow for that uncertainty and many of the agencies do not monitor their decisions to see if they are successful. Recently agencies have

chosen adaptive management as a preferred alternative (Missouri River, Grand Canyon, Everglades). They are conducting a piece of a management plan toward broad overall goals using a collaborative management process. They try one step and then go back to the full group. Built into the process is experimentation and monitoring of that experiment - all of which is taking place *after* the NEPA decision is made and is very collaborative. It all takes place in the implementation phase. Thus, (the Pilot Projects Initiative) should monitor what is happening with adaptive management and how collaborative process can be used to improve implementation. Maybe it will prove to offer a fix for the “problems” inherent in NEPA? Suggestions: monitor some innovative projects underway.

- There is a need to address the deteriorating trust that the American public has in its government. Even if no pilots result from these conversations, it would be valuable to elevate these issues to a level where we can have a substantive national dialog on the underlying (issues of) trust.
- You can't put NEPA into a box and separate it from the implementing regulations such as the Endangered Species Act. I don't think that you want to do that. They are what make NEPA significant.
- Include an education component to these pilots. As far as collaboration goes, I think collaborative groups take more time, effort and money for citizens. It takes less time and money for attorneys. I think that is good on both counts. Collaboration brings citizens together - to the table - and that makes for better governments. The time is a long-term investment, beyond the project, and has farther-reaching benefits. I think the pilots are an opportunity to showcase what collaboration can do for federal agencies.
- It would be terrific for you to test this millennium's communications capabilities through this effort. Is it possible to use technology more effectively? Perhaps it can help to break down the territorialism that surfaces in many of these disputes.
- Don't make the scope too broad - you will fail.
- Do you have the right audience here? When we have a controversial issue, the Governor and the Senators get involved. You have people like me that are working on the documents, but what about the other people involved in making the decision? Dr. Emerson: this process is intended to get the attention of those kinds of people over the next few years and help to educate the staff and the people who make the decisions.

Scope of the Pilot Projects Initiative

- You have an impossible task if you are trying to cover the whole gamut. You need to focus. Conduct a pilot to incorporate everyone's views on land use planning that will then be integrated into the NEPA process.
- You are really talking about land use planning and we're talking around it. Section 101 is predominately focused on land use planning. Section 102 may not be so.
- The U.S. Fish and Wildlife Service is not popular right now, so Section 7 may not be funded. I think you could collaborate or streamline NEPA; but if you don't take Section 7 into consideration, then you really miss something.
- Whether the Senator's request is about the land management and natural resources or not, I suggest that putting the focus on NEPA is a bad idea. People are very nervous about this effort impacting NEPA. I think the real issue is about the management of public lands - not about NEPA and we would be a lot better off if we had a series of projects that allowed us to do pilots in various aspects of the public domain. I would be in favor of opening it up in terms of the statutes that would be involved and narrowing it in terms of the substance (to land management).
- I do think that people are very nervous about this because of NEPA. Maybe we should be looking outside of NEPA. Perhaps look at a bigger picture – do things from a bigger structure like the Canadian Model Forests (include collaboration).

- I don't think you are going to get anywhere if you focus on NEPA or streamlining NEPA because it is sacred.
- I wouldn't take NEPA off the table; I just wouldn't say that it is *the* issue.
- Stay narrowly focused on resource management – but don't focus on NEPA.
- This is about public lands – it is also about planning on public lands (monitoring, etc). There is part of NEPA that has to be involved because it is the de-facto planning tool. I am very interested in looking at planning in a new way so that we don't have the gorilla in the closet – I want to see people do it themselves and incorporate careful evaluation.
- I don't see expanding this out beyond NEPA. At least NEPA is going to happen in 2 years. But a collaborative planning process is going to take 5 or 10 years. You could take an existing project and create a pilot around it to expedite. People have often wondered how to evaluate collaborative process, but I don't think that is the same as pilot projects.
- In a lot of ways, I think NEPA is a good focus because all the other statutes apply under NEPA. It is inclusive. It is also the only public process. The public has no right to participate in many of the other statutes. NEPA may be the right theme but you need to recognize that you are arguing about the other statutes – NEPA just will bring it all together.
- You could go beyond the scope of the Senators' letter, but you have to look at which agency you exclude. Look at the benefits and costs of excluding them.
- Maybe one of the things that could come out of this is to require that we look at adaptive management solutions?

Focus on Integration of Section 101

- Emphasize the focus on improving the implementation of NEPA in decision-making - NEPA is supposed to be a guiding method for improving decision-making. This should be factored into picking pilot projects.
- Is it a goal to improve the attention to Section 101 or is the goal to minimize it? The Senators are not known for their support for Section 101. Dr. Emerson: our reading of Section 101 includes the aspiration of balance among diverse interests. (Dr. Emerson provided a summary of Section 101.)

Use of Pilots

- The need to use “pilots” is related to the opportunities that seem to exist for increased collaboration that are not the normal but are an opportunity for other complex problems. In these situations where there is confusion (identified in the interviews), it is the result of the perception that the agency is going to do the same old thing.
- The reason to have pilots is to create a bigger envelope - within which unique groups can be created (like Diablo Trust, Henry's Fork and others).
- The idea of pilots is not to solve everything at once – we are not trying to fix all NEPA ailments with collaboration, but we want to give it an extended space to explore it.
- Avoid the distortion of pilot projects that will siphon funds from other efforts when there are already options for learning out there.
- I want to make sure that we do not take off the table the option of doing new, innovative pilots because even though we have done some innovative things, there are plenty of opportunities for new, innovative pilots. And we have identified some ourselves. We will continue to try to fund these projects through other means even if they are not part of this effort, but I am saying that they have not been done yet.
- I don't like the pilot project ideas: the tendency is to stay away from those projects that are not likely to be successful. There are some that are likely to be a failure - but you have a responsibility to pick the ones that are more likely to succeed (so it biases the outcome).

- There are plenty of examples of projects out there. Maybe you should go into agencies that are not currently doing collaboration and integrate it into one of their projects and see how it impacts/improves.

Criteria for Selecting Pilot Projects

- Require the pilot to address Section 1502.2.d because it is innovative and is not being done by and large.
- The level of the project and political interest may influence the credibility of the collaborative process. It may be important to consider this in selecting pilots.
- I think it would be interesting to see how the project applicants address the “spirit” of NEPA that is reflected in Section 101.
- In your selection of pilots, take the educational component into consideration.
- NEPA has impaired action – I would like to see the pilots address the issue of the insignificant impact of small actions. FONSI’s for example. Wood cleanup for example. We can’t get anything done under the current system.
- When selecting pilots, don’t assume that increased collaboration will be a benefit to any project. A lot of NEPA projects are “either/or” projects that do not lend themselves to collaborative process. Litigation is an option and that is okay and may be more efficient in some cases.
- We want to avoid funding the Cadillac processes that cannot possibly be replicated in the future.
- Maybe one of the things that could come out of this is to require that we look at adaptive management solutions.
- I think you have to choose pilots where the public’s lack of trust in government is taken into consideration.
- Make sure there is a mix of who wants resolution of the issue (e.g. environmental vs. resource user group). The pilots should include a mix of who will benefit from the streamlining or delay - a mix of who has the most to lose by participating collaboratively, etc.
- Identify criteria that are “show-stoppers” - that we absolutely cannot tolerate.
- Identify pilots that are going to focus on results. There is an extreme sense of fatigue after being involved for 25 years in NEPA projects that have never resulted in any action. As I approach the idea of pilots, what I get back is: Is pilots just another way for “analysis paralysis” to set in? A delay tactic? Do we ever see results? Concrete action? There is real skepticism. That said, I think there are issues that could benefit from further analysis and action.
- If there are pilots – I think that the idea of not reinventing the wheel is a good one. Perhaps there could be a call for projects? Maybe only parts of the project would be funded? Maybe there should be replications? You shouldn’t rule a project out because it isn’t something new or already out there, although that should be taken into consideration in the evaluation.
- Agency, geographic and substantive topic balances are not as critical as the need to balance who benefits from the effort. That is more important when seeking a balance.
- I think you should look at processes where you already have a defined goal or objective where the group is given a defined goal like a water quality standard that needs to be met – the end result is clear – and give that task to the group. Pre-determine the type of end result so that the group doesn’t spend half its time questioning what the end result should be. (Consensus would be how you get to the end.)
- Look at trans-boundary issues – among states or between states and tribes.

Evaluation and Reporting on the results of Pilot Projects

- Experimentation and monitoring should be built into the process *after* the NEPA decision is made. We should monitor what is happening with adaptive management and how collaborative process can be used to improve implementation. Monitor some innovative projects underway.

- Have a collaborative group that looks at collaborations that have taken place under NEPA and look at the factors that have worked. Fund the collaborative group to stay together for several years to follow the projects that are starting now. Take the projects that are spontaneously arising and extract lessons and develop communications mechanisms to get those lessons back to the people who need to hear them.
- Regarding reinventing the wheel, I don't have a problem with it. I think that our policy development is all about reinventing the wheel. The faces of agencies have changed and we have a much better understanding of the consequences of our actions but we don't know what to do with that. A common thread among all our efforts to reinvent the wheel is how poorly we evaluate. You need to include a serious budget for the research needed to understand the results. It needs to be independent, and it will be expensive.
- When evaluating the process, it is important to keep in mind that whatever you do in a pilot stage is likely to cost more and take more time than if it were standardized (because it is a pilot); and thus, you cannot evaluate it against conventional processes without taking that into consideration.
- In any evaluation of a pilot, take into consideration the stage at which we are involved in the process.
- It is hard to show what you have gained through collaboration. You can't know what you have saved. (Prevention is not as scientifically documentable.)
- You may find that speed is not a benefit in itself.
- Independent – says to me non-independent.
- I don't see the need for an independent evaluation. I do see the need for an objective evaluation.
- Just to clarify an earlier point - I think there should be objective evaluation – not necessarily a 3rd party “hired gun”.

Role of a Federal Advisory Committee

- A FACA committee could look at these issues over a period of time regardless of whether there are pilots.
- The advisory committee could play a role in the evaluation.
- Make sure you have funding for the time of people on FACA committees.
- Think carefully about the *process* for selecting the FACA committee. There are a lot of people who would be interested in how that process (collaborative) would be conducted. It is not trivial, and it takes significant resources to do it right.
- It will be important to solicit input from people with experience with FACA.

Promoting improvements in NEPA

- I think the idea of adaptive management is a good idea, but it is monitoring and goal-driven and we have not historically done a good job of either. We need to be more adaptive - need a collaborative approach to move toward more sound adaptive management.
- There is a lot of hope for a collaborative process; and although you can't ignore what has gone wrong (with collaborative process and NEPA), I think any contributions to what works in our democracy is important.

Concerns about Undermining NEPA through the Implementation of the Pilots Project Initiative

- Is the consternation about NEPA about coming back in a couple of years and saying that NEPA needs to be changed? Is this a backdoor means of changing NEPA?

- There are value conflicts inherent in some of these natural resource management issues that cannot be resolved through collaboration. This pilot project effort should not try to suggest otherwise.
- There are concerns that this effort will result in changes to the statute.
- The answer is no because NEPA is procedural – can't really change it.
- It could be undermined very easily with minimal effort – given an amendment to the statute.
- I am concerned about any effort to short-circuit our effectiveness whether through litigation or collaboration.
- These Senators have been looking at market driven approaches to replace the current approach.

Retrospective Research and Analysis of Case Studies

- There have been numerous efforts to reinvent or improve NEPA. There have been many good ideas. Many of them have been stopped, ignored, etc. Those may be opportunities (to look at them and learn from them); it may also be a caution.
- The Model Forests Program in Canada may be worth looking at. They have really expanded the use of collaboration. It has been well documented.

NEXT STEPS

Dr. Emerson stated that the U.S. Institute is not soliciting proposals for pilot projects at this juncture but intends to respond to the Senators with a report. Dr. Emerson explained that everyone in attendance would get a summary of the meeting via email and the summary will become part of the public record. A synthesis of the results of this workshop and the workshop to be held in Washington D.C., along with the written comments will be prepared. After analysis and review of the input, the U.S. Institute will prepare a set of recommendations that would first be discussed with OMB and then with the Senators. Dr. Emerson explained that since the initiative is likely to have dollars associated with it, OMB must be involved before returning to the Senators. After this process, the U.S. Institute will determine whether and how it will go forward. Dr. Emerson explained that all pertinent written materials would be available on the U.S. Institute's web site: www.ecr.gov. She concluded by saying she was confident that Congress will be interested in the outcome of such a proposed process whether pilots are involved or not – even if it just a public dialogue. In response to a question, she indicated that a follow-up workshop is not currently planned, but next steps have not yet been determined.

One participant observed that the perspectives participating in the two workshops currently do not include the Southeast, East or Northeast perspectives. A lot of people from those regions care deeply about these issues. A very different perspective would be offered in Atlanta for example. Additional workshops were suggested to further vet the Pilot Projects Initiative.

Attachment A – List of Attendees
Attachment B – Presentation Slides
Attachment C - Agenda

Attachment A

**NEPA Pilot Projects Initiative Public Workshop
U.S. Institute for Environmental Conflict Resolution
of the Morris K. Udall Foundation
Denver, CO – June 8, 2001
Attendee List**

*NEPA Pilot Projects Initiative Public Workshop
U.S. Institute for Environmental Conflict Resolution
of the Morris K. Udall Foundation
Denver, CO – June 8, 2001*

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*NEPA Pilot Projects Initiative Public Workshop
U.S. Institute for Environmental Conflict Resolution
of the Morris K. Udall Foundation
Denver, CO – June 8, 2001*

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Attachment B

NEPA Pilot Projects Initiative

Public Workshop

Presentation Outline

U.S. Institute for Environmental Conflict Resolution

of the

Morris K. Udall Foundation

Slide 1.

U.S. Institute for Environmental Conflict Resolution

- Established by Congress in 1998 within the Morris K. Udall Foundation
- Located in Tucson, Arizona, Udall's home district
- Independent, impartial, non-partisan institution within the federal government
- Assist parties in resolving environmental conflicts that involve federal agencies or interests
- Assist in the implementation of NEPA Section 101

Slide 2.

Initiative Overview

Request of Senators Baucus, Crapo, Reid, and Thomas

- How can pilot projects be used bring collaborative decision-making to actions taken under NEPA?
- Focus on strategies for collaboration, consensus building, and dispute resolution to achieve the substantive goals of NEPA.
- Draw upon the expertise of NEPA experts, ADR practitioners and other interested stakeholders.

Slide 3.

Initiative Overview

- Assistance of Meridian Institute
- Sought input from a diverse group of individuals representing:
 - Environmental organizations
 - Resource users
 - Federal, state, and local governments
 - Tribes
 - Participants in local and regional collaborative processes.

Slide 4.

Initiative Overview

Purpose of conversations:

- Specific concerns/issues that pilots should address.
- Parameters to define the pilot initiative
- Criteria to select pilot projects
- Needed institutional mechanisms to assure project oversight, implementation, and evaluation.
- Ways to maximize the likelihood that positive lessons can be learned from pilot projects.

Feedback used to develop the substance of the draft report in the Federal Register.

Slide 5.

Workshop Objective

Provide an opportunity for discussion, comment and dialogue on the draft report that appeared in the May 11, 2001 Federal Register.

Slide 6.

Summary of Interview Results and Literature Review on Problem Identification

Meridian Institute

Slide 7.

Summary of Interviews & Literature Review

- Approximately 50 interviews conducted to date.
- Targeted a balanced and broad diversity of perspectives as measured by stakeholder interest, expertise and experience with NEPA and collaborative process.
- Currently available literature and written resources reviewed including but not limited to 1999 Workshop proceedings and CEQ NEPA Effectiveness Study.

Slide 8.

Purpose of Interviews and Research

To learn more about:

- Specific problems or concerns to be addressed
- What parameters should define the initiative
- What criteria should be used to select pilot projects
- Institutional mechanisms needed to assure oversight, implementation, and evaluation
- How to maximize the likelihood that lessons learned from the pilots will influence future implementation of NEPA.

Slide 9.

Three Categories of Problem Areas

- Problems Associated with NEPA Implementation
- Problems Associated With but Not Limited to NEPA Implementation
- Problems Associated with Collaborative Processes and Dispute Resolution

Slide 10.

Problems Associated with NEPA Implementation

- Inconsistent NEPA implementation and interpretation by lead agencies
- Efficiency and effectiveness of implementation.
- Inappropriate timing of interagency or intergovernmental coordination.
- Overemphasis on documentation with insufficient attention to improving the quality of planning and/or decision-making.
- Inadequate attention to and utilization of the substantive policies contained in Section 101.

Slide 11.

Problems Associated With But Not Directly Related to NEPA Implementation

- Information management and use of technical information
 - Lack of baseline data
 - Insufficient utilization of information technology
 - Excessive data demands
- Role of the Federal Advisory Committee Act in the NEPA process
 - Limitations and Perceptions
 - Advisory vs. Decisional

Slide 12.

Four Types Of Collaboration

- Interagency collaboration and coordination among federal agencies
- Intergovernmental collaboration and coordination among the lead federal agency and agencies from tribal, state, and/or local governments
- Multi-stakeholder collaboration initiated and organized by the lead federal agency, or a cooperating governmental agency, involving representatives of affected non-governmental interests
- Privately organized collaboration organized and conducted by non-governmental interests with limited or no involvement from lead federal agency

Slide 13.

Problems Associated With Collaborative Processes and Dispute Resolution

- When Initiating Collaborative Processes
- During Collaborative Processes
- When Implementing the Results of Collaborative Processes
- Associated with Privately Organized Collaborative Processes

Slide 14.

Problems When Initiating Collaborative Processes

- Lack of guidance for deciding how to collaborate
- Inadequate stakeholder representation
- Lack of resources
- Involving nationally oriented groups in locally oriented processes

Slide 15.

Problems that Arise During Collaborative Processes

- Roles and responsibilities of agency representatives
- Maintaining balanced stakeholder representation
- Time needed to complete multi-stakeholder collaboration
- Goal confusion

Slide 16.

Problems that Arise When Implementing the Results of Collaborative Processes

- Stakeholder expectations not met
- Inconsistent decisions
- Implementation challenges

Slide 17.

Problems Associated with Privately Organized Collaborative Processes

- Process explicitly excludes certain stakeholder interests
- Certain stakeholder interests choose not to participate
- Lack of guidance regarding federal agency participation
- Lack of clarity regarding results of privately organized processes

Slide 18.

Discussion Questions

Slide 19.

Proposed Approach

- Potential value of pilot projects
- Design of a Pilot Projects Initiative
 - Challenges
 - Basic Features
 - Scope of federal lands issues
- The role of the U.S. Institute
- Evaluation and reporting

Slide 20.

Value of Pilots

- Distinguish concerns with NEPA implementation from concerns about other statutes
- Demonstrate innovative and practical solutions
- Learn how collaborative processes can improve NEPA implementation

Slide 21.

Design Challenges

- Ensure all interests are fairly represented
- Identify & respond to institutional barriers
- Address concerns about the potential outcomes of the pilots
- Manage projects with appropriate oversight

Slide 22.

Basic Features of Pilot Projects Initiative

- Sufficient number of pilot projects to draw reliable lessons
- Avoid reinventing the wheel
- Post-project evaluation is essential
- Transparency, openness, and public input needed to build consensus

Slide 23.

Scope of Federal Lands Issues

How broadly or narrowly should the Institute interpret the Senators' suggestion to focus on "federal lands and natural resource management" issues?

Slide 24.

Role of the U.S. Institute

- Program administration & oversight
- Make final decisions on selection criteria
- Collaborate with participating agencies
- Identify evaluation criteria
- Select & oversee independent evaluators
- Report lessons learned
- Establish and manage a Federal Advisory Committee

Slide 25.

Sample Selection Criteria

- Geographic balance
- Diversity of agency participation (federal, state, and tribal)
- Balance across categories of collaboration
- Projects of local, state, regional, and national scale
- Occur at a variety of stages of NEPA implementation

Slide 26.

Evaluation and Reporting

- Establish criteria for evaluation
- Evaluation of results and outcomes of the pilots
- Conducted by independent professional evaluators
- Report the lessons learned

Slide 27.

Opportunity for questions and further input

Attachment C

Agenda

**NEPA Pilot Projects Initiative Public Workshops
U.S. Institute for Environmental Conflict Resolution
of the
Morris K. Udall Foundation**

**Denver, CO and Washington, DC
June 8 and June 14, 2001**

AGENDA

**NEPA Pilot Projects Initiative Public Workshops
U.S. Institute for Environmental Conflict Resolution
of the
Morris K. Udall Foundation**

Denver, CO and Washington, DC
June 8 and June 14, 2001

- 8:30 a.m. Welcome, Introductions, Opening Remarks, and Overview of the NEPA Pilot Projects Initiative – Kirk Emerson, Director, U.S. Institute for Environmental Conflict Resolution
- 9:00 a.m. Review meeting objectives and agenda – Meridian Institute facilitators, Tim Mealey and Molly Mayo
- 9:15 a.m. Opportunity for clarifying questions and answers
- 9:30 a.m. Summary of interview results and literature review on problem identification:
 - related to NEPA implementation
 - associated with but not limited to NEPA implementation
 - associated with collaborative processes and dispute resolution
- 9:50 a.m. Opportunity for feedback on the list of problems identified to date and the expectation that these problem statements can serve as a focal point for the NEPA Pilot Projects Initiative
- 10:30 a.m. Break
- 10:45 a.m. Continued discussion of invited participants on problem identification
- 11:30 a.m. Opportunity for additional public comment on problem identification
- 12:00 noon LUNCH
- 1:00 p.m. Summary of the proposed approach of the U.S. Institute for the NEPA Pilot Projects Initiative – Kirk Emerson
- 1:30 p.m. Opportunity for questions and answers
- 1:45 p.m. Opportunity for input on:
 - selection criteria for pilot projects
 - role of a Federal Advisory Committee
 - timing / phasing of Pilot Project Initiative activities
 - inclusion of retrospective analysis of case studies in addition to prospective evaluation of designated pilot projects
 - approach to and criteria for evaluating the results of pilot projects
 - other issues?
- 3:15 p.m. Opportunity for additional public comment
- 3:45 pm Summary of day's discussions, wrap up, and next steps
- 4:00 p.m. Adjourn

WORKSHOP SUMMARY

NEPA Pilot Projects Initiative Public Workshop U.S. Institute for Environmental Conflict Resolution

Washington, DC

June 14, 2001

WELCOME, INTRODUCTIONS, AND OPENING REMARKS

Dr. Emerson, Director of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), opened the workshop at 8:45 a.m. with a welcome to all participants and brief opening remarks. She introduced Tim Mealey and Molly Mayo of Meridian Institute as facilitators for the meeting and asked everyone present to introduce him or herself. The meeting attendees included 24 participants and 38 observers (see Attachment A).

Following introductions, Dr. Emerson provided a brief introduction to the U.S. Institute and an overview of the NEPA Pilot Projects Initiative. The presentation slides are included as Attachment B. Dr. Emerson explained that U.S. Senators Craig Thomas, Max Baucus, Mike Crapo, and Harry Reid asked the U.S. Institute to explore the use of pilot projects to learn more about how to improve the implementation of the National Environmental Policy Act (NEPA) through increased collaboration, consensus building, and appropriate dispute resolution processes. Dr. Emerson explained that this request grew out of the efforts of the University of Wyoming's Institute for Environment and Natural Resources (IENR) and the University of Montana's Center for the Rocky Mountain West (CRMW), which had held a conference on "Reclaiming NEPA's Potential" in March 1999.

The U.S. Institute responded to the Senators' request by drawing from the knowledge of NEPA experts, Alternative Dispute Resolution (ADR) practitioners and interested stakeholders in an effort to assess the viability of the NEPA Pilot Projects Initiative (the Initiative). Dr. Emerson stressed that the focus of the Initiative is not on the Act itself, but on the implementation of NEPA. Further, she described how the U.S. Institute contracted with Meridian Institute to assist with the assessment and the initial phases of the initiative. Input for the assessment was sought from individuals representing diverse perspectives, including environmental organizations; resource users; federal, tribal, state and local governments; and participants in collaborative processes. The results of the assessment phase of the project were used as the basis for developing a Federal Register Notice (FRN), which was published on May 11, 2001. The FRN invited public comment through written responses and/or participation in one of two public workshops. Dr. Emerson explained that the Washington D.C. workshop was the second of two; the first was held in Denver on June 8, 2001. Dr. Emerson elaborated that the purpose of the workshop was to provide an opportunity for public discussion, comment and dialog on the preliminary findings and approach to the Initiative described in the FRN. She emphasized that the objective of the workshop was not to establish consensus but to maximize discussion and dialogue on the preliminary findings and approach.

AGENDA REVIEW AND OPPORTUNITY FOR INITIAL Q&A

Tim Mealey reviewed the Agenda with the group (see Attachment C). He explained that a balanced and diverse group of attendees had been invited to participate and that observers would also be invited to comment at select times in the agenda.

[EXPLANATORY NOTE: At various points in the meeting, the discussion was limited to invited participants in order to efficiently manage the discussion and ensure a balance of perspectives reflected in the record. Observers were given an opportunity to comment at select times in the agenda. In this

summary, participant and observer comments are recapped below in a non-attributional manner and organized according to several themes that emerged throughout the day without distinction as to whether the comment was made by a participant or an observer. There is no particular significance to the order in which the comments are presented. Each comment represents a synthesis of an individual's comments]

Mr. Mealey suggested some basic ground rules and highlighted the fact that the workshop would be documented without attributing comments to meeting attendees. He explained that a summary of the workshop would be circulated to everyone in the room and attendees would be given the opportunity to submit written comments in response to that summary.

Mr. Mealey invited comments from the meeting participants on the objectives and agenda for the workshop. One participant pointed out that there are other initiatives related to NEPA currently under development in the Senate. Senator Baucus, for example, has asked for an expedited environmental review policy to be developed. This and other efforts to "streamline" environmental review are already underway. The participant asked whether the U.S. Institute had spoken to anyone from Baucus's staff or others about the overlap between these two efforts. Dr. Emerson explained that the U.S. Institute was aware of efforts to streamline NEPA and was involved with one such effort with the Federal Highways Administration. Another participant suggested that the efforts to streamline and the U.S. Institute's Initiative to improve environmental review processes are not mutually exclusive.

SUMMARY OF INTERVIEW RESULTS

Molly Mayo reviewed the results of the interviews and preliminary review of the literature. The presentation slides, which highlighted the preliminary findings published in the 5/11/01 FRN, are included in Attachment B. She explained that the list of issues and concerns was intended to provide an overview of the results and stimulate discussion from the group that would help to identify additional factors or clarify issues that have already been identified.

Discussion of Problems and Concerns About NEPA

Following Ms. Mayo's presentation, the participants were given the opportunity to clarify, comment on, and add to the ideas presented with the understanding that the problem statements presented could serve as a focal point for the NEPA Pilot Projects Initiative. The focus of the discussion was on:

- Reactions to the results of the interviews and research,
- Identification of additional problems associated with NEPA implementation and the use of collaboration to implement NEPA, and
- Clarification of how the problem statements could be used to guide the selection of pilots.

Participant comments began with a discussion of the scope of the Initiative and clarification of the meaning and intent of the message in the Senators' letter. In response to questions raised about the impetus for and motivation of the Senators' letter and the background of the proposed Pilot Projects Initiative, the participants discussed the history of the idea for the Initiative. Participants who attended the 1999 NEPA Conference explained that the origin of pilots was raised long before the Senators became involved.

Before addressing the questions about concerns over NEPA, several of the participants offered comments on the overall Pilot Projects Initiative. One participant said that initiatives like this could be frightening to some interest groups. In the wrong hands or taken down the wrong track, "solutions in search of problems" could be created. Struggling to identify problems could lead us down the wrong path. One participant thought that pilot projects might not be the solution to the problems with NEPA. Another said that too many problems had been identified and the mission or purpose was not clear. They suggested

trying to limit the focus of the Initiative. Additional suggestions regarding the scope and focus of the Pilot Projects Initiative are summarized below in the section on Proposed Approach.

Regarding the participants comments on the problem statements and identification of issues associated with NEPA, one participant suggested that the problem statements be re-worded in a form that can define measurable goals. Another participant suggested starting with questions that are positively framed. Rather than focusing on problems, focus on what we can measure by way of indicators of success. That may be very different than a problem orientation. What we can and cannot measure may affect what we try to do. Once the measures of success are in place, then come back and match them with the problem orientation. Additional comment on the problems and concerns associated with NEPA are summarized below according to general themes that emerged during the discussion.

General Comments on NEPA Implementation

- Have you looked at the resources of the agencies responsible for implementing NEPA? They are crippled. The lack of resources to implement NEPA (both technically and procedurally) impact agency effectiveness.
- Immensely complex issues are being addressed in many of these mega decision-making processes. These are difficult decisions that may take time even if the process is efficient. It may be enlightening to look into whether data is available about how long these decisions take.
- While NEPA recognizes other statutes, they do not recognize NEPA.
- While there has been some clarification of the meaning of Section 101, NEPA has been implemented predominately as a procedural statute.
- There may be examples of time saving mechanisms being used to implement NEPA, such as tiered Records of Decision (RODs).
- A lot of emphasis has been placed on inconsistency. The Federal Emergency Management Agency (FEMA) has become a troubleshooter agency in the area of natural disasters. What NEPA needs is a FEMA. An agency that can see across boundaries to solve problems. Perhaps the U.S. Institute can be the FEMA of NEPA implementation.
- Recognizing an element of scientific uncertainty inherent in the process is important. Incomplete information rules help to address it, but they are not being used very much. Scoping steps may help.

Comments on How Agencies are Implementing NEPA

- While statutory and Council on Environmental Quality (CEQ) regulations apply broadly, each agency has its own rules. There is a “meta level” of rules missing to create consistency among the agencies.
- Agencies have different implementing procedures that impact the (inconsistent) way that NEPA is carried out by various agencies.
- NEPA implementation rules among agencies are not different but include varying degrees of specificity. If they are different, we have a problem. There is a meta rule that exists, but the devil is in the detail – how the rules are implemented.
- Distinct differences also exist between different parts of the same agency (not just among agencies). The culture of the agency and its effect on the nature and extent of the conflicts that emerge also come into play. An example would be air quality issues in one EPA region versus another (recognizing that this example is not NEPA per se, but extraneous factors related to attitude, culture, etc. are very significant).
- Yes, there are CEQ regulations, but they were written 10 years after the Act. They incorporated Supreme Court cases into the rules. The U.S. Institute needs to look and see what is not in them to find opportunities for improvement: e.g., how agencies and governments should work together, interaction within and among agencies.

- The root cause of (some of the) problems is the cultural differences within agencies about the importance of NEPA. Some agencies have a checklist mentality. NEPA documents are typically not decision-making documents but simply justifications for decisions previously made by the agency. Streamlining will only make this worse.
- In the transportation arena, NEPA analysis is done after the fact. None of the early decisions are subjected to NEPA.
- The people who wrote NEPA did not intend for it to be a discrete process. When it is a discrete process, the agencies have failed to implement it appropriately. When an Environmental Impact Statement (EIS) is required, they hire a consultant. When this is done, agencies are abdicating their responsibility. With few exceptions, strategic environmental assessments are not being done.

Comments on Collaborative Processes and Decision-Making

- Collaborative processes are not always the right approach (and the U.S. Institute should be careful of giving the impression that collaboration is always appropriate).
- A lot has transpired since the passage of NEPA, especially regarding collaborative process (and information technology). The U.S. Institute needs to figure out a way to incorporate collaborative process and information technology into decision-making appropriately. They need to apply the same rigor of evaluation (to collaborative process as with NEPA process). There is a difference between collaboration and collaborative decision-making. The U.S. Institute should address the reluctance of the agencies to use collaborative decision-making.
- The U.S. Institute needs to be careful distinguishing between what is stated as the problem and what the problem really is. Since NEPA was enacted, there have been complaints from the Hill: it takes too long, it is too expensive, etc. The real problem is agency openness of decision-making, especially as perceived by people who feel they have proprietary rights to federal lands.
- NEPA has tried to connect major federal actions with the systems that are involved in implementing them: getting people to think more broadly. The initiative should look at the opportunities NEPA provides to think more systemically and collaboratively.
- Try to determine the kind of situations in which collaborative processes apply and what (collaborative process) tools would help improve NEPA in those situations.
- I agree, there is a critical difference between collaborative process and a collaborative decision (i.e., shared decision-making).
- The importance of the NEPA scoping process is the element of reaching out and understanding the full suite of issues. For those that really need to be addressed, the option exists to form a work group to focus on them in more detail.
- The lack of understanding about when to or when *not* to use a collaborative process is not unique to NEPA. From the perspective of an ADR professional, the resistance to use ADR/collaboration is based on the fear of feeding an expectation that it will be used all the time. Therefore, more information/guidance provided about when to and when not to use ADR and what processes are appropriate, the better. Greater understanding is needed of different types of processes, where they fit and where they do not fit. Pilots can improve our limited understandings about where and when ADR and collaborative processes can be used.

Comments on Collaborative Processes Specifically Associated with NEPA

- Scoping is not discussed much in the Federal Register Notice, nor has it been a focus in today's discussion. NEPA is inherently collaborative (via the scoping process) but is not decisional. What we are doing already is scoping. Collaboration is a part of NEPA through the scoping process.
- Barriers exist to forming collaborative solutions: stove pipes of authority and responsibilities. Some are legitimate; some are a function of mindsets; some are the result of insufficient funding.

- The U.S. Institute needs to distinguish between impact analysis and political assessment. We should focus on actions that cause impacts and then go back and assess whether and how to do collaboration.
- Within and across agencies, the role of NEPA needs to be looked at in greater depth. (In my experience) the context for a NEPA EIS is often oriented toward justifying a lease or sale, but what really happens is that we are identifying the stipulations that will allow it to be acceptable to all or many people.
- NEPA is not a linear process, nor is the ADR process. NEPA is a systemic process that needs to be designed around the concept of sustainability. There are many ways in which a healthy system functions. If we lock ourselves into a linear approach, those who have the power can quickly manipulate it.

Government Issues Associated with Collaborative Processes

- You need to consider government-to-government collaboration.
- You are looking at issues on an agency-by-agency basis, but NEPA is implemented differently within agencies. An example would be within the U.S. Fish and Wildlife Service where NEPA may be implemented differently among different regions. Until we can standardize the protocol and all regions look at collaboration in the same way, how are we going to interact across agencies with any degree of consistency? We need to come to a consensus within agencies about these issues.
- There is a lack of conflict management and collaborative process skills within agencies and between agencies.

Comments on NEPA Decision-Making and Planning

- The goal should be to improve the quality and durability of decisions under NEPA. Is that what the U.S. Institute is focusing on?
- Regarding complex versus routine decisions, even routine decisions can get bogged down.
- An overarching problem is the timeliness of decisions (or lack thereof).
- There may not be neutral principles of government. Some clients would be mortified by more timely or less timely decision-making, depending on the decision being made. Identify the concepts, principles, strategies that can truly transcend a specific decision. Geographic Information Systems (GIS) and information technology stuff, for example.
- One person offered a flow chart used by the Bonneville Power Administration (BPA) as a model of a “good decision-making and NEPA process”.
- Look more at a decision model rather than at the NEPA model. Otherwise, we get too locked into the statute and implementing regulations. NEPA and its implementing regulations are based on decision processes, but just looking at NEPA doesn’t give you a full picture of the decision model. For example, the problem identification phase is not emphasized during the EIS but it is a critical step in any decision-making process. There is also a question of what decision-making process is most appropriate and that varies depending on the situation.
- The notion that planning is, can, and should be done under NEPA is critical. The context for NEPA is a fairly formal, rigorous effort that precedes project level analysis. The Forest Service “roadless rule” is not a good example of this.
- The goal is to improve the quality and durability of decisions.
- NEPA can make routine decisions very complex by forcing many layers of involvement into decisions that should be made by agency management (e.g., harvesting wood after forest fires). Even routine decisions can get bogged down.

Inadequate focus on Section 101 and the Balance Between Sections 101 and 102

- I am intrigued by the interplay between substance and process. [Read aloud Section 101.] This is heady rhetoric. The bottom line is that frequently, certain interests are in denial. The short-term interests drive many efforts. The goals inherent in Section 101 are longer-term and often denied.
- I agree that Section 101 needs to be elevated up, but I think we need to keep in mind that other aspects/interests need to be balanced.
- BPA has integrated Section 101 into their decisions. BPA operates like more of a business than some agencies, so we can apply a business model: boiling complex impacts down to their basics. Improved quality of decisions has led to higher quality dialogue and tiered RODs.
- At this point, most agencies can write NEPA documents that should be court/lawsuit proof, but there seems to be a sense that there is something deeper that is missing (i.e., Section 101).

PROPOSED APPROACH

After lunch, Dr. Emerson presented a summary of the proposed approach for the NEPA Pilot Projects Initiative to help stimulate discussion and receive feedback from the attendees about next steps. The presentation slides are included in Attachment B. She explained that the morning discussion focused on defining and clarifying the nature of the problem and that the objective of the afternoon was to look forward. Dr. Emerson went on to summarize some of the overarching questions that were raised during the morning discussion. Is this project going to be problem-based or focus on opportunities? Are we focusing on “fixing” NEPA? Is this going to be about environmental decision-making process, or substance, or both? Should we emphasize NEPA and the integration of Sections 101 and 102 or focus on the issues around collaboration and how, when, and where you use collaboration? What about the challenges within the agencies versus inter agency/intergovernmental and broader public interests challenges. These all have to be factored into the U.S. Institute’s decisions about how to proceed and how to design the mechanics of the project.

When asked for clarification on the timeframe for the initiative, Dr. Emerson explained that she saw that at least 3 to 5 years was needed for the project, but preliminary results would be necessary before then.

Discussion of Proposed Approach

To guide the discussion of the proposed path forward, Dr. Emerson asked for feedback on the following factors:

- selection criteria for pilot projects
- role of a Federal Advisory Committee
- timing / phasing of Pilot Projects Initiative activities
- inclusion of retrospective analysis of case studies in addition to prospective evaluation of designated pilot projects
- approach to and criteria for evaluating the results of pilot projects
- other issues?

Purpose and goals of the Pilot Projects Initiative

- Projects need to be able to raise the understanding and awareness of these complex problems and decision-making and we want to document that as a benefit along with other goals of the project.
- Further blossoming of NEPA – not fixing it but furthering its evolution.
- Opportunity exists to have a very constructive public conversation. There are lots of possibilities.

- These projects should be focused a little more. Get just a few agencies together – take a smaller approach, and don't be so encompassing that it is open for interpretation.
- What would you call success? Incremental change in how NEPA works and what its results are? I have a hard time knowing what that means. What advice will your constituents be giving about what to do with the results of the projects?
- NEPA has stopped being what it is supposed to be. It has become a bureaucracy and legal mechanism for avoiding legal suits. If you can improve decision-making, that is success.
- Getting closer to the meaning of "101" probably means something different to everyone in this room, and collaboration is not necessarily an improvement.
- There is dissatisfaction with NEPA from my perspective. We are very cautious about holding collaboration as the answer to these problems. When you combine collaboration with other decision rules we have had success in arriving at decisions that are satisfying to environmental perspectives and are implemented etc. I am not suggesting that just by meeting with a facilitator you are going to arrive at a better decision. We have other principles that we also feel should be factored into improving decision-making and improving planning processes... We don't want to hang our hat just on collaboration. A rigorous process is what we support.
- If collaboration is the way to go then it will only be accepted if a lot of other factors are included in a rigorous process. It will not stand alone.
- Restoring hope in government is a valid goal and NEPA is a tool for doing so.
- The Senators supporting this initiative have the political horsepower here to revitalize the statute. Doing so will have some significant challenges in the near future that require a significant national dialogue. Get some of the larger environmental groups who have the national environmental issues that will require collaborative decisions.
- Address mistrust of government. This is a societal issue that applies to any pilot.
- Organization obstacles have to be addressed – it is such a pervasive issue if you are looking at long-term change.

Design and Management of the Initiative

- One of the things we have found on the large-scale policy projects is that you have to do one to be able to do one. A variety of levels of learning are integrated into this process; within a project and among the projects and structure the interactions among the pilots. (The commenter offered to provide further information and Meridian Institute will follow-up with this.)
- There are inadequate resources and a variety of different resources. That will make implementation of the pilots difficult.
- Managing expectations is needed. This kind of pilot project raises expectations. The questions need to be framed to address the various levels of expectations.
- Need to define some practical steps.
- Need to cut down on the time frame, but no one wants to say what the magic time frame is or what it needs to be. I would like this initiative to build on the work done to date.
- This is going to be a very expensive, resource intensive project and there is not a clear document of what you want to get out of it.
- Maybe we need to use different words to describe what we are doing here. More precise language.
- A lot of agencies use NEPA for different purposes than it was originally intended. In our agency, the way we measure success is by surviving a court challenge. We put in our documents what we need to survive the court challenges. How can you design a study to change the way some of the agencies use NEPA?
- Components for pilots: currently collecting NEPA factors and some are addressed by collaborative processes. Take all the problems across the board – which would best lend themselves to collaborative process, then take those that can be replicated, measured and tracked and get it down to a manageable group, and then pick the pilots. Look for specific problems and

address them – e.g., FACA. This is a process for getting to a level where you can deal with making a decision.

- Need to clarify how “things” are potentially going to change before we embark on this process.
- Would like to see the highest levels of agencies and organizations involved in whatever goes forward to promote resources becoming available.
- Would suggest looking at pilots in different stages of processes.

Focus on Integration of Section 101

- Section 101 of NEPA at large is the section of policy that is broad enough to include all interests. We need to track the process through Section 101.
- Coming to agreement on Section 101 is like reaching infinity. The Senators’ letter is basically saying: “Can’t we all just get along?” Collaboration is good and so is constructive conflict. Think about NEPA and collaboration in the context of global climate change. We are all agreeing to the fact that there is a problem. To make a pilot project work, everyone has to agree that there is a problem, but the chance of “losing” by moving forward cannot exist.
- What you are talking about is adaptive management. Consider creating “Innovation webs.” This is a long-term process. You may have to integrate various tools through public involvement process – innovative nodes. Adaptive management is coming through the NEPA process.

Value of Pilots

- I think there must be a better word than pilot to describe what you are trying to do (a series of programs, projects, or initiatives). Divide them to look at the NEPA process and various aspects of it. You may include criteria and subsets of criteria along the continuum of the NEPA process.
- I support the idea of small and several pilots as opposed to just one big one.
- (My organization) would view a pilot project as a real engagement, not something out in the middle of nowhere without relevance to an important and timely issue. We are not talking about simulations.
- A pilot is a vehicle to explore how different processes can be used to address new ideas. For example, what are the 3-4 specific problems, including substantive problems (not just procedural) that we want to test/address? We should determine what are the issues people care about, are fighting about, and then design pilots around those issues.

Criteria for Selecting Pilot Projects

- I would love to see some pilots devoted to improving the role of local governments in the process. I believe that states are arriving at a level of sophistication with these (natural resource and environmental) issues that they would be valuable to integrate into the process more substantively.
- The use of visualization and technology systems should be better integrated into the decision-making tools. We need to look for opportunities to afford the public use of these tools. They can also disguise the problems. How we use technologies is an important influence on the decision. (E.g., ESRY, ARCHVIEW, GIS, etc.)
- Don’t focus on intra-agency exclusively. Interagency issues should also be considered.
- Include a “risky” project: one that we have a low expectation of and may really be a winner if we can make improvements.
- Identify selected collaboration and dispute resolution techniques that you want to test on these projects.

Reporting On The Results of Pilot Projects

There are some people who conduct the reviews better than others. I have not yet found someone who has crystallized the issues and what has happened in order to get information out to the practitioners and agencies in the *near term* - evaluating ongoing efforts so people can learn from them while they are evolving.

Performance Criteria for Evaluating the Initiative

- Don't spend a lot of time picking projects until you have decided what you want to evaluate.
- Define measurable performance criteria and establish how you are going to measure them.
- I don't think that the NEPA processes should be litigation proof. That is part of the problem. I would rather see that each instance of litigation should be seen as a failure. NEPA is too valuable to be left to the lawyers – (the lawyers) should be avoided at all costs.
- Funding also is an evaluation issue. It needs to be taken into consideration when planning implementation. It doesn't do any good to develop a consensus opinion for a project that cannot be implemented.
- Can you evaluate personality factors that are influencing the outcome of the process? Of course the management styles have an influence and they should be measured based on the criteria that influence their performance. That would address the integration of conflict management skills.
- This is very subjective – the role of personalities should be considered.
- Looking at a project from start to finish should include different measures of success or evaluation criteria than looking at projects as a snapshot in time. You could look at various stages of projects.
- Pick the NEPA processes, then test the techniques, then evaluate performance. My suggestion would be to include the following criteria for evaluation. Note: these criteria and others should be applied to each selected case study, using a numeric ranking such as 0-5. As a baseline for comparison, these same criteria should be applied to several similar NEPA cases that have been completed during the past 2-3 years.
 1. Incorporate participation and collaboration of federal and non-federal stakeholders beginning to end. [NEPA Section 101(a)]
 2. Use scoping to define meaningful alternatives for analysis (for EA's and EIS's) that address the issues of long-term resource use and sustainability. [NEPA Section 101(b) (1), (3) and (6)]
 3. Incorporate objective analysis of the cumulative, indirect and/or induced effects of the proposed action. [NEPA Section 101 (a) and (b)(3)]
 4. Enhanced the direct involvement of agency technical staff and policy-level officials in the NEPA Process. [NEPA Section 101(a) and (b)]
 5. Reduce the agency average cost and timeframe for completion of the NEPA process (EA's and EIS's). [NEPA Section 101(a) and (b)]
 6. Reduce the potential for NEPA litigation? [NEPA Section 101(a)]
 7. Discouraged hijacking of the planning process by agency political appointees. [NEPA Section 101(a)]
 8. Achieve a decision that is broadly acceptable to all affected stakeholders. [NEPA Section 101(b) (3) and (4)]

Scope of the Initiative

- If you have a bigger scale (substantively) you can take advantage of the multiple trade-offs.
- Start small (not 50 projects).

- Retrospective analysis is not enough - it cannot be either retrospective analysis or pilots, it needs to be both.

Role of a Federal Advisory Committee

- FACA is a nice way of spreading the risk among multiple responsible parties.
- Need to address accepting results from the pilot – even if you don't like the results.
- Regarding FACA: could be looked upon as a set of principle conveners. Find innovation and present it so that people can learn more about it - spread the word.

Promoting improvements in NEPA

You need to raise the quality of the process and decision-making. I want to test the tools because I think that if Congress sees the value, then they are more likely to fund the project(s). If it is an innovative idea and valuable to the decision-making process then it should be integrated into the NEPA process.

Retrospective Research and Analysis of Case Studies

- If the project does retroactive analysis, then there may be some near-term lessons that can be funneled back into the agencies prior to the 5-year time frame.
- The retrospective needs to be done near-term and should be able to be done economically.
- Case studies exist (e.g., Take Reduction Teams).
- Analyze common themes, fundamental issues that are being addressed in NEPA processes within a particular agency then look at whether the fundamental issues are being addressed in the same way by other agencies.
- Government Performance and Results Act (GPRA) processes had to account for NEPA implementation and may be a source of good data.

NEXT STEPS

Following a break, Dr. Emerson stated that the U.S. Institute intends to respond to the Senators with a report. Dr. Emerson explained that everyone in attendance would get a summary of the meeting via email and the summary will become part of the public record. A synthesis of the results of this workshop and the workshop held in Denver, along with the written comments, will be prepared. After analysis and review of the input, the U.S. Institute will prepare a set of recommendations that would first be discussed with the Office of Management and Budget (OMB) and then with the Senators. Dr. Emerson explained that since the initiative is likely to have dollars associated with it, OMB must be involved before returning to the Senators. After this process, the U.S. Institute will determine whether and how it will go forward. Dr. Emerson explained that all pertinent written materials would be available on the U.S. Institute's web site: www.ecr.gov.

Attachment A – List of Attendees
Attachment B – Presentation Slides
Attachment C - Agenda

Attachment A

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***NEPA Pilot Projects Initiative Public Workshop
U.S. Institute for Environmental Conflict Resolution
of the Morris K. Udall Foundation
Washington, DC – June 14, 2001
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Attachments B and C

NEPA Pilot Projects Initiative

Public Workshop

Presentation Outline and Agenda

The presentation outline and the meeting agenda for the Washington, D.C. workshop (referenced as Attachments B and C, respectively) are the same as those presented at the Denver, Colorado workshop. Please refer to the Denver workshop summary for these documents.

Attachment 2

**NEPA Pilot Projects Initiative
Summary of Written Comments**

**Request for Comments
Published in May 11, 2001
Federal Register**

NEPA Pilot Projects Initiative
U.S. Institute for Environmental Conflict Resolution
Summary of Written Comments

Overview

The U.S. Institute for Environmental Conflict Resolution (the Institute) requested written comments on its draft report regarding the NEPA Pilot Projects Initiative published in the May 11, 2001 Federal Register. A total of 28 written comments were received during the 45-day comment period. Comments were received from state and federal agencies, tribal interests and academicians, private practitioners of alternative dispute resolution, and local collaborative research groups. The written comments, synthesized here, largely mirror the comments that were raised in the two public workshops.

All of the written comments received expressed support for the Pilot Projects Initiative stressing its potential value to agencies and the public. Several commentors cautioned the Institute to make sure that the initiative is clear in its objectives with well articulated outcomes; that the process is open and transparent; that the Institute take care that the initiative does not become overly complex and thus potentially undermined. The overarching themes of the written comments fall into four categories:

- NEPA implementation;
- NEPA Section 101;
- Collaboration and the collaboration-decision-making nexus; and
- Project design recommendations including selection criteria, outcomes/evaluation, and FACA.

Comments in each of these categories are summarized below and the categorized comments without attribution are attached at the end of this summary. Copies of the written comments are available from the Institute upon request.

Comments Regarding NEPA Implementation

The written comments received provided additional suggestions relating to challenges of NEPA implementation that were not captured in the Institute's draft report. The role of the courts and their rulings were identified as a major factor in NEPA implementation. It was noted that past court rulings have limited NEPA to procedural questions only, which is a critical factor in how NEPA is treated within federal agencies. Several people also expressed concern that settling NEPA related litigation out of court, effectively allows organizations rather than the government, to set policy.

Several people commented on NEPA implementation in the context of government-to-government consultation and coordination with Native American tribes. Tribes are often consulted too late with too little support or understanding by agencies of the opportunities for innovation that are created by working with a sovereign. In some situations, tribes may lack the resources or experience in participating in NEPA processes but have the capacity and staff to participate. Tribal participation as co-lead or cooperating agencies has been underutilized by

agencies. One commenter stated that tribes are not familiar enough with NEPA to use it effectively, particularly Environmental Assessment (EA) processes where only 38% of agencies have public involvement process in EA's. Another person commented that at least in Indian Country, there is a strong tendency to do EA's and Findings Of No Significant Impact (FONSI), avoiding the lengthier Environmental Impact Statement (EIS) process that also allows for public input. There were a number of comments relating to NEPA implementation in the context of environmental justice in minority communities and the need to better address the impacts of decisions stemming from EA's on minority populations and their livelihoods.

There were a number of comments expressing concern about the limited range of alternatives identified in EA's and that the economic effects of proposed actions in EA's are evaluated at the national and state level rather than the local level. Several comments stressed the importance of finding ways to encourage public involvement in the EA process as well as improve project monitoring and enforcement of FONSI's and Records of Decision (ROD's).

Some individuals expanded on some of the problems with NEPA implementation that were identified in the draft report. Other federal laws such as the Historic Preservation Act, the Fish and Wildlife Coordination Act, and the Endangered Species Act can be integrated into the NEPA process and in some situations are major factors in the NEPA decision-making process. In the context of Native American tribes, a need for greater coordination with Section 106 of the Historic Preservation Act in improve the representation and valuation of tribal cultural spiritual values and sites in the assessment process was expressed. It was also pointed out that NEPA is part, but not all of the decision making process, the Administrative Procedures Act permits the agencies to select any of the alternatives identified in an EIS.

With respect to excessive data demands and emphasis on documentation, one person elaborated that large documents and excessive data discourage readers and make the document less accessible to the general public. In addition, the tendency for over documentation and therefore increased costs and time, creates a negative incentive for doing small projects. Finally, over documentation slows the NEPA process making it difficult to respond to changing ecological conditions or legislative/financial circumstances.

It was also recognized that during NEPA processes, issues are raised that go beyond the project scope but are critical to the processes. It is important to identify these bigger issues and may be necessary to address them in an intermediate or separate analysis from the actual project scope. Another comment emphasized the value of preparing policy level NEPA documents that use tiered Records of Decision. It was suggested that this approach helps the public focus on issues ripe for decision rather than trying to predict every foreseeable outcome during the initial process. In contrast, other comments expressed concern that agencies focus too heavily on site-specific analysis rather than at the landscape level. Conducting NEPA processes that focus on the landscape level, taking into account forage and watersheds for example could provide more timely, complete and useful documents.

A number of people made comments relating to NEPA implementation in the context of the NEPA Pilot Projects Initiative. Specifically, that the Act itself should not be changed, and that issues relating to NEPA implementation should be viewed as opportunities to improve the implementation as opposed to a minefield of problems. A few people expressed concern that NEPA is treated as a legal requirement rather than a decision making tool, particularly where

there are efforts to “shoehorn” proposed actions into an EA. A number of individuals emphasized that NEPA is a decision making tool, and as such, agencies are not required to select the alternative with the least environmental consequences despite the common misperception that this is the case. In some situations the preferred alternative may be counter to the goals of Section 101.

Suggestions Regarding NEPA Implementation

A number of people provided specific suggestions for ways to address some of the problems associated with NEPA implementation. These suggestions are listed below.

- Revisit previous decisions that apply to a broad policy for site-specific proposals.
- Develop a process for handling “new information” introduced mid stream into the NEPA process.
- Promote consideration of procedural requirements to conduct EAs.
- Establish a NEPA notification clearinghouse.

A few individuals made a number of specific suggestions how NEPA implementation could be improved in the context of tribes. A synthesis of those suggestions is below.

- Clarify and advance tribal involvement in NEPA through promulgation of CEQ regulations or policy guidance.
- Involve and delegate responsibilities to local tribal communities to monitor mitigation and suggest adaptive changes and provide funding.
- Develop a training curriculum for federal agencies to broaden their understanding and ability to engage tribes in the NEPA process. Conduct training with both agencies and tribes. Develop training curriculum for tribes to develop their own Tribal Environmental Policy Act (TEPA).
- Establish a system of regional NEPA tribal liaisons to track and provide early notification to tribes of impending EA/EIS processes that may affect tribal lands.
- Explore development of more effective and culturally sensitive means to solicit and address matter of tribal cultural importance.

Comments Concerning NEPA Section 101

Included in the Institute’s mandate is a directive to “...assist the Federal Government in implementing section 101 of the National Environmental Policy Act of 1969...” The Institute is interested in how to address Section 101 of NEPA in the setting of the Pilot Projects Initiative. Written comments regarding Section 101, praised its intent, emphasized how it could be better implemented, and underscored the difficulty that agencies have in implementing Section 101

based on past court rulings that have emphasized the importance of Section 102 over Section 101, and the relationship of NEPA to other federal laws such as the Endangered Species Act that tend to weigh more heavily during the NEPA decision-making process.

One commenter pointed out that federal agencies have numerous ongoing functions, programs, and resource uses that do not require the completion of a CEC, EA, or EIS, yet Section 101 applies to these other actions as well. Attempting to improve the implementation of Section 101 only through the EA and EIS process is really looking at only a small part of the problem. The Act states that "...it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources..." because the definition of "practicable means" varies across agencies, so to does the level of implementation of Section 101. One comment suggested that a greater emphasis and consideration of the "no action" alternative and the social and economic conditions and impacts of a proposed project may strengthen the link between Sections 101 and 102 as people begin to better understand the linkages between health ecosystems and health communities. Greater study and consideration of information on the interrelationships between man's activity and the natural environment would strengthen the link between Sections 101 and 102 of NEPA. Finally, one person wrote that if more attention were paid to Section 101, it would create a greater impetus to try collaborative approaches.

Comments Regarding Collaboration

Written comments regarding collaborative processes echoed the problems that were identified in the Institute's draft report. It was suggested that an additional collaborative approach: processes that are privately organized and the lead agency is significantly involved, be included on the Institute's list.

Commentors reflected on their own experiences and concerns about collaborative processes, for example that the work of field staff and stakeholders can be undone at the national level resulting in frustration and mistrust and underscoring the importance of the need for clear lines of authority and delegation of decision making power within the agency. One person pointed out that as collaboration is applied to larger issues, there are more demands on state and federal agencies to make changes that require careful consideration and thought. Because collaboration "gone bad" can become parochialism, groups implementing collaboration must use care not to reinforce the positions of those who are skeptical about the value of collaboration. The commenter emphasized the importance of defining and understanding agreement seeking processes such as collaboration and consensus building and learning when it is appropriate to use these processes.

The attitude of participating parties was raised as an important factor in the success of any collaborative process. With respect to NEPA implementation, it was suggested that parties must agree to let the process work, which will require flexibility as issues, and options come and go and mitigation approaches evolve through the NEPA process.

The Collaboration and Decision-Making Nexus

The nexus of collaboration and decision-making, as applied to federal agencies, drew a number of comments relating to the nexus and its application to federal agencies. One perspective was that because agencies hold the final decision-making authority and are unlikely to relinquish this authority, it is not possible to have a collaborative NEPA process. The agency is responsible for weighing the conflicting demands on the same resource and in the end is the final decision maker although opportunities for collaboration and consensus building may exist in the EA or EIS public involvement processes. Another person stated that collaboration does not mean local decision, as much as it means locally appropriate decisions. Similarly, while consensus cannot be assured, the opportunity to persuade the decision-maker to your view must be guaranteed.

A number of comments underscored the importance of alternative dispute resolution (ADR) processes as tools in the NEPA process and that collaboration is one approach that may not be the most appropriate approach in all situations. The importance of best practices in the field of dispute resolution as applied to NEPA implementation was also emphasized.

With respect to decision-making in general, several people underscored the importance of first looking at the decision process as a whole and then see how NEPA implementation fits within that process. It was suggested that taking this approach would enable people to better understand the NEPA decision-making process and potentially result in more informed decisions. Agencies are limited in decision-making by a variety of real world factors including agency authorities, mission, and a proposed action's social environment.

Design Recommendations

The Institute's draft report put forth a proposed approach and number of design considerations including the development of an advisory committee and potential selection criteria for review and comment. With respect to the initiative design, suggestions included:

- clarifying the goals and desired outcomes of the initiative early on;
- the lessons learned should be transferable to other projects;
- clearly defining the scope of the Institute's efforts;
- the process be collaborative and build trust amongst participants; and
- that the Institute aim for consistency to ensure comparability across projects and enough flexibility to allow for adaptability in specific projects.

It was suggested that an adaptive management model be applied to the development and implementation of the initiative, and include a strategic planning approach to address the overlap of other federal laws such as CERCLA and ESA in the NEPA process. Others emphasized that the pilots should be designed as true learning opportunities where both the successes and the failures are examined. A specific suggestion included that the focus of the initiative be narrowed to two primary problems associated with NEPA implementation: 1) efficiency and effectiveness and demonstrating that collaboration can enhance both, and 2) problems associated with over documentation. The Institute was encouraged to promote process flexibility and avoid trying to design a program with a "one size fits all" solution. Finally, it was suggested that the Institute review past and on-going NEPA processes as a part of a pilot program.

Specific comments regarding the scope of the initiative suggested that the Institute define the initiative's purpose and need; the Senators' letter supports a focus on NEPA but across a broad range of federal actions. As the Institute defines the scope of the initiative it should keep in mind that agencies and the public have finite time and resources available. Another group suggested that it might be worthwhile to learn more about how to improve natural resources management through increased collaboration and consensus building separately from an analysis of agencies' NEPA compliance. One person suggested that a broad focus was most appropriate, as it will provide for a broader application of the results.

Finally, with respect to participation in the initiative, it was suggested that scientists and technical experts are often skeptical or dismissive of collaborative processes. The initiative should involve people with diverse perspective regarding collaboration from the start. If some are reluctant to participate, learn what their arguments are and test them in practice alongside the arguments in support of collaboration. Only under these circumstances will the claims or findings from pilots survive the crucible of peer review, and we must be prepared to expose the pilots to peer review.

Suggestions Regarding an Advisory Committee

The Institute is considering creating an advisory committee to advise it on the development and implementation of the NEPA Pilot Projects Initiative. Several comments were received that supported the creation of an advisory committee. One commenter suggested that the Institute include representatives from federal, state, and local agencies, NEPA experts, collaborative process experts, practitioners, resource users, and representatives of environmental organizations. It was also suggested that a second tier or a subcommittee of stakeholders could be created if the main committee was too large to be effective.

Suggestions Regarding Outcomes and Evaluation

Written comments paralleled the emphasis on outcomes and evaluation that were raised at both public workshops. Comments relating to outcomes included the importance of considering the distinguishing characteristics of the individual pilot and the implementability of the outcome. One commenter suggested that one of the key goals of the initiative should be to be able to transfer the knowledge learned from these pilots to other projects in order to produce improved results in other processes. Goals should also include helping parties establish success criteria and facilitating the implementation of agreements. It was suggested that outcomes be applied to determine how a given change, suggestion or procedural adjustment can be implemented to: make convening more likely; improve the quality of meeting discussions; increase the likelihood that interest-based negotiations will be used; clarify the roles of participants; provide a framework for better option development; and assist smarter decisions.

Comments relating to the development of the evaluation framework encouraged the Institute to employ adaptive management as one of the guiding principles of the evaluation process. Others suggested that a consistent mechanism be in place to allow evaluators to compare pilots side by side according to a common set of metrics. It was suggested that the evaluation framework be developed and overseen collaboratively within an advisory committee rather than by independent contractors in order to maintain objectivity. One group suggested that the Institute develop a pool of potential evaluators from the roster or establish a sub-roster for evaluators that can be

teamed with academicians. Evaluators should have first hand experience with ADR processes and should possess substantive NEPA expertise. One group suggested that the evaluations be conducted anonymously to keep the evaluations project-focused and maintain the integrity of subsequent evaluations.

Suggestions Regarding Selection Criteria

Comments regarding pilot selection criteria echoed earlier comments emphasizing the need for clarity in what the pilot would test and define a narrow focus. It was suggested that an advisory committee should develop the selection criteria collaboratively. If the advisory committee develops the selection criteria, it was suggested that the reasons why specific parameters are selected be explained in order to better understand the interests and concerns of the committee members. Other suggestions included outlining not only the criteria that pilot project proposals must meet for inclusion but also outline criteria that are inappropriate for a project to be considered under this initiative.

The written comments included a number of specific examples of criteria for consideration as listed below:

- Diversity across the phases of NEPA processes (those well under way, as well as those just commencing);
- Diversity across the types of project initiators' interests (e.g. processes proposed by organizations that want a federal agency to do something; those that want the agencies not to do something; some initiated by those who have an interest in broadening the alternatives being considered);
- Diversity across pilots that address: governmental policy and regulation, programmatic issues, and site specific issues;
- Do several consecutive projects in the same administrative jurisdiction to see how NEPA process evolves over time and use of collaborative processes;
- Consider pilots that demonstrate a prior investment in collaboration or a strong desire to embark in a collaborative process;
- Consider pilots that explicitly consider Section 101 during the collaborative process. (Collaboration should aim for something larger and more farsighted than mere "winning" or dividing the natural resource "pie");
- Consider participants who have previously undertaken or attempted collaborative NEPA process; and
- Consider participants who have previously integrated indigenous knowledge/civic science into a NEPA process.

Last, nearly all of the written comments provided suggestions with a specific focus or topics for pilot projects. These suggestions are listed below.

- Determine if collaboration and consensus building can improve the EA and EIS public involvement processes (scoping, draft EIS, and final EIS) that result in better NEPA decisions.
- Consider a pilot that employs collaboration in a supplemental EIS process.
- Include projects that are generating alternatives upstream rather than downstream of the draft EIS and rely on alternatives generated from factual information.
- Explore how NEPA is carried out in light of institutional missions and statutory regulations that agencies must adhere to.
- Determine how agencies are currently implementing Section 101, how have they included it in their missions and policy, then determine if the agencies can improve that process. (If Section 101 is part of an agency's mission, then EA and EIS decisions may more consistently select the alternative with the least environmental consequences.)
- Include projects that involve government-to-government communication and collaboration with tribes such as an MOU for: notification procedures for EA's and EIS', agreement on use of tribal expertise, opportunities and assistance to tribes to provide monitoring and mitigation measures, and develop protocols for more culturally sensitive mechanisms to solicit and address matters of cultural importance.
- Use NEPA to help tribes explore economic development options in the form of either a reservation based EIS or a nationwide programmatic EIS. Most Indian reservations have very high unemployment and poverty rates and if an EIS process examined the potential impacts of economic development in Indian country may help refine what types of programs have worked and what we should be doing differently. An EIS process looking and economic development strategies could help fashion different options and identify unique opportunities consistent with tribal culture.
- Include projects that model federal-tribal cooperation with a pure tribal pilot and a tribal-cross jurisdictional pilot. As a general rule there is not enough cross-fertilization between tribal governments and local governments.
- Select a number of tribes to engage in doing a NEPA like environmental review under its own tribal laws such as TEPA.

Appendix H.

List of Individuals and Organizations Who Submitted Comments

Individuals and organizations who provided written comments. Photocopies of comments available upon request.

Charles Alton	Bonneville Power Administration, U.S. Department of Energy	Portland, OR
Joseph Carbone	National Environmental Policy Act Coordinator, USDA Forest Service	Washington, DC
Mike Casabonne	President, New Mexico Public Lands Council	Roswell, NM
Tony Cheng	Department of Forest Sciences, Colorado State University	Fort Collins, CO
Ray Clark	Consultant	Washington, DC
Caren Cowan	Executive Director, New Mexico Cattle Growers' Association	Albuquerque, NM
Caren Cowan	Co-Chairman, People's Alliance for Jobs and the Environment	Albuquerque, NM
Carol Daly	President, Flathead Economic Policy Center	Columbia Falls, MT
David O. Finkenbinder	National Mining Association	Washington, DC
Warren Flint	Five E's Unlimited	Washington, DC
Kurt Flynn	Bureau of Reclamation	Highlands Ranch, CO
Lou Gallegos	Assistant Secretary for Administration, U.S. Department of Agriculture	Washington, DC
Lucy Garliauskas	Federal Highways Administration	Washington, DC
Callie Gnatkowski	Executive Director, New Mexico Wool Growers, Inc.	Albuquerque, NM
Mike Harty	CDR Associates	Boulder, CO
Dain Maddox	Integrated Inventory and Monitoring Coordinator, USDA Forest Service, Eastern Region	Milwaukee, WI
Scott McCreary	CONCUR Inc.	Berkeley, CA
Mathew McKinney	Executive Director, Montana Consensus Council	Helena, MT
Joseph McMahon	Consultant	Denver, CO
Anne Miller	Acting Director, Office of Federal Activities, Environmental Protection Agency	Washington, DC
Elizabeth Nelson	Environmental Policy Analyst, The Tulalip Tribes	Marysville, WA
Mary O'Brien	Environmental Consultant, Science and Environmental Health	Eugene, OR
Randy Shipman	Rocky Mountain Field Director, Frontiers of Freedom People for the USA	Rock Springs, WY
Duane Shroufe	Director, AZ Game and Fish Department	Phoenix, AZ
Dean Suagee	Director, First Nations Environmental Law Program	South Royalton, VT
Donald Treasure	Environmental Specialist, Bureau of Reclamation	Denver, CO
Glenn Wallace	Planning and Environmental Analyst, Bureau of Land Management	Lakewood, CO
Peter Williams	USDA - Forest Service Collaboration Team	Logan, UT